CHAPTER 12

Conduct or Discipline of Members, Officers, or Employees

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Conduct or Discipline of Members, Officers, or Employees

A. INTRODUCTORY; PARTICULAR KINDS OF MISCONDUCT

§ 1. In General; Codes of Conduct

Prior to the 90th Congress,[1] there was no rule setting forth a formal code of conduct for Congressmen. However, in 1967 and 1968 the rules of the House were amended to (1) make the Committee on Standards of Official Conduct a standing committee of the House; (2) establish, as a new Rule XLIII, a Code of Official Conduct for Members, officers, and employees of the House; (3) require Members, officers, and certain key aides to disclose financial interests pursuant to procedures outlined in new Rule XLIV.[2]

The Code of Official Conduct requires that each Member, officer, or employee conduct himself so as to reflect creditably on the House and to adhere to the spirit and letter of the rules of the House and the rules of its committees. The code also contains provisions governing the receipt of compensation, gifts, and honorariums, as well as the use of campaign funds.[3]

The 85th Congress adopted by concurrent resolution a Code of Ethics to be adhered to by all government employees, including officeholders.[4]

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should:

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1. Pre-1936 precedents on the punishment and expulsion of Members may be found at 2 Hinds' Precedents §§ 1236–1289 and 6 Cannon's Precedents §§ 236–239.

This chapter includes precedents through the 94th Congress, 2d Session.

2. 114 CONG. REC. 8802, 90th Cong. 2d Sess., Apr. 1, 1968 [H. Res. 1099, amending H. Res. 418]; Rule XLIII, Rule XLIV, *House Rules and Manual* §§ 939, 940 (1973).

3. As used in the Code of Official Conduct, the term "Member" includes the Resident Commissioner from Puerto Rico and each Delegate to the House; and the term "officer or employee of the House of Representatives" means any individual whose compensation is disbursed by the Clerk of the House of Representatives. Rule XLIII, *House Rules and Manual* § 939 (1973).

4. 72 Stat. Pt. 2, B12, July 11, 1958. This Code of Ethics is a guideline for those in government.

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.

3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration, or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

6. Make no private promises of any kind binding on the duties of office, since a Government employee has no private word which can be binding on public duty.

7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

9. Expose corruption wherever discovered.

10. Uphold these principles, ever conscious that a public office is a public trust.

In House Report No. 94–1364, 94th Congress second session, House Committee on Standards of Official Conduct, "In the matter of a Complaint against Representative Robert L. F. Sikes," July 23, 1976, the committee indicated that the Code of Ethics was an expression of traditional standards of conduct which continued to be applicable even though the code was enacted in the form of a concurrent resolution in 1958 (pp. 7–8):

> The Committee believes that these standards of conduct traditionally applicable to Members of the House are perhaps best expressed in the Code of Ethics for Government Service embodied in House Concurrent Resolution 175, which was approved on July 11, 1958. Although the Code was adopted as a concurrent resolution, and, as such, may have no legally binding effect, the Committee believes the Code of Ethics for Government Service nonetheless remains an expression of the traditional standards of conduct applicable to Members of the House prior both to its adoption and the adoption of the Code of Official Conduct in 1968. As is explained in House Report No. 1208, 85th Congress, 1st Session, August 21, 1957:
>
> > House Concurrent Resolution 175 is essentially a declaration of fundamental principles of conduct that should be observed by all persons in the public service. It spells out in clear and straight forward language *long-recognized* concepts of the high obligations and responsibilities, as well as the rights and privileges, attendant upon services for our Government. It reaffirms the *traditional standard*—that those holding public

> office are not owners of authority but agents of public purpose—concerning which there can be no disagreement and to which all Federal employees unquestionably should adhere. It is not a mandate. It creates no new crime or penalty. Nor does it impose any positive legal requirement for specific acts or omissions. (Emphasis added.)
>
> Thus, even assuming that House Concurrent Resolution 175 may have "died" with the adjournment of the particular Congress in which it was adopted, as one commentator seems to suggest, the traditional standards of ethical conduct which were expressed therein did not.

§ 2. Committee Functions

Prior to the 90th Congress, there was no standing or permanent committee in the House to investigate and report on improper conduct of Members, officers, and employees. Prior to that time, select temporary committees were ordinarily created to consider allegations of improper conduct against Members, although in some instances such questions were considered by standing committees.(5)

The rules of the House were amended in the 90th Congress to make the Committee on Standards of Official Conduct a standing committee of the House.(6) In that Congress, the House adopted a resolution(7) which provided that measures relating to the Code of Official Conduct or to financial disclosure be referred to the committee. It also authorized the committee to recommend to the House appropriate legislative and administrative actions to establish or enforce standards of official conduct for Members, officers, and employees; to investigate alleged violations of the Code of Official Conduct, or of any applicable law, rule, regulation, or

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5. For example, House Committee on Military Affairs, 2 Hinds' Precedents § 1274, 41st Cong. (1870); House Committee on the Judiciary, 3 Hinds' Precedents § 2652, 37th Cong. I (1861); House Committee on Elections, 3 Hinds' Precedents § 2653, 39th Cong. (1865); Committee on House Administration (misuse of contingency funds), 112 CONG. REC. 27711, 89th Cong. 2d Sess., Oct. 19, 1966 [H. Res. 1047], and (congressional conflict of interest), 109 CONG. REC. 4940, 88th Cong. 1st Sess., Mar. 28, 1963.

6. The House Committee on Standards of Official Conduct was created in the 90th Congress, 113 CONG. REC. 9448, 90th Cong. 1st Sess., Apr. 13, 1967 [H. Res. 418]; jurisdiction redefined, 114 CONG. REC. 8802, 90th Cong. 2d Sess., Apr. 3, 1968 [H. Res. 1099, amending H. Res. 418]. Rule X clause 1(s) and Rule XI clause 19, *House Rules and Manual* (1973).

7. 114 CONG. REC. 8777 et seq., 90th Cong. 2d Sess., Apr. 3, 1968 [H. Res. 1099, amending H. Res. 418].

other standard of conduct, and, after a notice and hearing, recommend to the House, by resolution or otherwise, appropriate action; to report to the appropriate federal or state authorities, with approval of the House, any substantial evidence of a violation of any applicable law disclosed in a committee investigation. The committee was also authorized to give advisory opinions respecting current or proposed conduct. Thus, in the 91st Congress, second session [116 CONG. REC. 1077, Jan. 26, 1970] the Committee on Standards of Official Conduct published Advisory Opinion No. 1, on the role of a Member of the House of Representatives in communicating with executives and independent federal agencies either directly or through the Member's authorized employee. See § 10, infra.

Resolutions recommending action by the House as a result of an investigation by the committee relating to the official conduct of a Member, officer, or employee, were made privileged. For a discussion of sanctions which may be invoked against a Member, see §§ 12–18, infra.

In 1970, Rule XI was amended to confer upon the Committee on Standards of Official Conduct jurisdiction over measures relating to (1) lobbying activities affecting the House, and (2) raising, reporting, and use of campaign contributions for candidates for the House; and the committee was given authority to investigate those matters and report its findings to the House.[8]

The Committee on Standards of Official Conduct is authorized, under Rule XI clause 19, to issue and publish advisory opinions with respect to the general propriety of any current or proposed conduct of a Member, officer, or employee of the House, upon request of any such person.[9]

The Senate, in 1964, created a permanent committee designated as the Select Committee on Standards and Conduct to receive complaints and investigate allegations of improper conduct which may reflect upon the Senate, violations of law, and violations of rules and regulations of the Senate.[10] In 1968 the Senate amended its rules to preclude certain business activities of its officers and employees, to regulate certain aspects of campaign financing, and to require the disclosure of Senators' financial interests.[11]

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8. 116 CONG. REC. 23136–41, 91st Cong. 2d Sess., July 8, 1970 [H. Res. 1031].

9. See, for example, the advisory opinion in § 10, infra.

10. 110 CONG. REC. 16938, 88th Cong. 2d Sess., July 24, 1964 [S. Res. 338, amended].

11. 114 CONG. REC. 7406, 90th Cong. 2d Sess., Mar. 22, 1968 [S. Res. 266, to

§ 3. Violations of Statutes

The Constitution provides that a Member is to be privileged from arrest during sessions except for "Treason, Felony, and Breach of the Peace."[12] However, with respect to the application of criminal statutes, the Members of Congress, unless immunized by the Speech or Debate Clause of the Constitution,[13] are subject to the same penalties under the criminal laws as are all citizens.[14] Indeed, the Members are specifically or impliedly referred to in a number of penal statutes, the enforcement of which rests in the executive and judicial branches. The statutes below are cited by way of example:

2 USC § 441—Failure to file federal campaign financing reports.

18 USC § 201(c)—Soliciting or receiving a bribe.

18 USC § 201(g)—Soliciting or receiving anything of value for or because of any official act performed or to be performed.

18 USC § 203(a)—Soliciting or receiving any outside compensation for particular services.

18 USC § 204—Practice in the Court of Claims.

18 USC § 211—Acceptance or solicitation of anything of value for promising to obtain appointive public office for any person.

18 USC § 287—False, fictitious, or fraudulent claims against the United States.

18 USC § 371—Conspiracy to commit an offense against the United States.

18 USC §§ 431, 433—Prohibits contracts with the government by Members of Congress, with certain exceptions.

18 USC § 599—Promise of appointment to office by a candidate.

18 USC § 600—Promise of employment or other benefit for political activity.

18 USC § 601—Deprivation of employment or other benefit for political activity.

18 USC § 602—Solicitation of political contributions from U.S. officers or employees, or persons receiving salary

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provide standards of conduct for Members, officers, and employees of the Senate].

Parliamentarian's Note: In 1967 (90th Cong. 1st Sess.) the Senate select committee investigated allegations of misuse for personal purposes of campaign and testimonial funds by Senator Thomas J. Dodd (Conn.). It reported a resolution of censure against the Senator which was adopted. See § 16.3, infra.

12. U.S. Const. art. I, § 6. Generally see Ch. 7, supra.

13. U.S. Const. art. I, § 6, clause 1. See *U.S.* v *Brewster,* 408 U.S. 501 (1972); *Gravel* v *U.S.,* 408 U.S. 606 (1972); *Powell* v *McCormack,* 395 U.S. 486 (1969); *U.S.* v *Johnson,* 383 U.S. 169 (1966); *Doe* v *McMillan,* 412 U.S. 306 (1973). See Ch. 7, supra, for immunities generally.

14. See *U.S.* v *Johnson,* 337 F2d 180 (C.A. Md., 1964), affirmed 383 U.S. 169, certiorari denied, 385 U.S. 846.

or compensation for services from money derived from the U.S. Treasury.

18 USC § 612—Publication or distribution of political statements without names of persons and organizations responsible for same.

18 USC § 613—Solicitation of political contributions from foreign nationals.

18 USC § 1001—False or fraudulent statements or entries in any matter within the jurisdiction of any department or agency of the U.S.

31 USC § 231—Liability of persons making false claims against the government.

The statutes cited above are also expressly or by implication applicable in many instances to the officers and employees of the House. Again, the enforcement thereof is not left to internal means in either House (although each House could impose internal sanctions), but rests in the executive and judicial branches.

The House rules authorize the Committee on Standards of Official Conduct to report to the appropriate federal or state authorities, with approval of the House, any substantial evidence of a violation of an applicable law by a Member, officer, or employee of the House, which may have been disclosed in a committee investigation.(15)

15. Rule XI clause 19(e), *House Rules and Manual* § 720 (1973).

Criminal Conduct; Privilege From Arrest

§ 3.1 The privilege of the Member from arrest does not apply to situations where the Member himself is charged with a crime referred to in the Constitution.

The United States Supreme Court,(16) in construing article I, section 6, clause 1, "they [the Senators and Representatives] shall in all cases except treason, felony, and breach of the peace, be privileged from arrest . . ." has declared that the terms of the provision exclude from the operation of the privilege all criminal offenses. Thus, it may be concluded that the privilege only applies in the case of civil arrest.(17)

See also the proceedings on Nov. 17, 1941,(18) wherein Mr. Hatton W. Sumners, of Texas, in discussing a resolution granting permission of the House to a Member to appear before a grand jury in response to a summons, referred to the power of the House to refuse to yield to a court summons "except as the Constitution

16. See *Williamson* v *United States,* 207 U.S. 425 (1908).

17. See *Long* v *Ansell,* 293 U.S. 76 (1934).

18. 87 CONG. REC. 8956, 77th Cong. 1st Sess.

provided with reference to crimes."

Similarly, in earlier remarks, Mr. Sumners had stated:

> It is important that the House of Representatives control the matter of the attendance of Members of the House upon the business of the House. It ought not to control, of course, when the Member commits a crime, and it has no power to control.[19]

19. *Id.* at p. 8954.

See also H. REPT. NO. 30, 45th Cong. 2d Sess., 1878 (House Committee on the Judiciary), and 3 Hinds' Precedents § 2673, as to whether there had been any invasion of the rights and privileges of the House in the alleged arrest and imprisonment of Representative Robert Smalls (S.C.). The report concluded:

"Upon principle, therefore, as well as in view of the precedents, your committee are clearly of the opinion that the arrest of Mr. Smalls, upon the charge (of having accepted a bribe while a state officer of South Carolina) and under the circumstances hereinbefore set forth, was in no sense an invasion of any of the rights or privileges of the House of Representatives; and that, so far as any supposed breach of privilege is concerned, his detention by the authorities of South Carolina for an alleged violation of the criminal law of that State was legal and justifiable; and having arrived at that conclusion they have deemed it not only unnecessary but improper for them to make any suggestion here as to what course the House should have pursued had the arrest been a violation of its privileges."

§ 4. Violations of House Rules

As shown in the summary below, many of the rules of the House contain provisions under which a Member may be disciplined or penalized for certain acts or conduct:

HOUSE RULES

Rule I clause 2—Speaker shall preserve order and decorum.

Rule VIII clause 1—Disqualification from voting on floor on question where Member has a direct personal and pecuniary interest.

Rule XIV clause 1—Obtaining the floor, and method of address ("confine himself to the question under debate, avoiding personality").

Rule XIV clause 4—Call to order of Member on his transgressing the rules during sessions.

Rule XIV clause 5—Words taken down if Member is called to order.

Rule XIV clause 7—Prohibition on exiting while Speaker is putting the question; prohibition on passing between a Member who has the floor, and the Chair, while the Member is speaking; prohibition against wearing a hat or smoking while on the floor.

Rule XIV clause 8—Prohibition against introducing persons in the galleries to the House or calling the attention of the House, during a session, to people in the galleries.

Requiring a Member to withdraw where he has persisted despite re-

See Ch. 7, supra, on arrest and immunity of Members.

peated calls to order (Jefferson's Manual, see *House Rules and Manual* § 366 [1973]).

No criticism of the Senate (Jefferson's Manual, see *House Rules and Manual* § 372 [1973]), nor personal abuse, innuendo or ridicule of the President (Jefferson's Manual, see *House Rules and Manual* § 370 [1973]).

Punishment by House of a Member for things of which the House has cognizance (Jefferson's Manual, see *House Rules and Manual* §§ 303 et seq. [1973]).

§ 5. Abuse of Mailing or Franking Privileges

The House Commission on Congressional Mailing Standards provides guidance and assistance on the use of franking privileges by Members. The commission is authorized to prescribe regulations governing the proper use of the franking privilege.(1)

Complaints respecting alleged misuse of the franking provisions in title 39 of the United States Code (2) are considered by the commission for the Members, and its decisions on facts are final. If the commission finds that a serious and willful violation has occurred or is about to occur, it refers the matter to the House Committee on Standards of Official Conduct.(3)

§ 6. Absences From the House; Indebtedness

Congress has enacted statutes (a) directing the Sergeant at Arms of the House to deduct from the monthly payment to a Member the amount of his salary for each day that he has been absent from the House unless such Member assigns as the reason for such absence the illness of himself or of some member of his family;(4) (b) directing the deduction from the salary of a Member for each day that he withdraws without leave from his seat;(5) (c) directing the deduction by the Sergeant at Arms from any salary or expense money due a Member for his delinquent indebtedness to the House.(6)

If an employee of the House becomes indebted to the House or to the trust fund account in the of-

1. 2 USC §§ 501 et seq., Pub. L. No. 93–191, 87 Stat. 742 (1973), Pub. L. No. 93–255, 88 Stat. 52 (1974).

The Select Committee on Standards and Conduct of the Senate performs the same function for the Senate (2 USC § 502).

2. 39 USC §§ 3210–3213(2), 3215, 3218, 3219.

3. 2 USC § 501(e).

4. 2 USC § 39 (1856).

5. 2 USC § 40 (1862).

6. 2 USC § 40a (1934).

fice of the Sergeant at Arms, and fails to pay such indebtedness, the chairman of the committee or the elected officer of the House having jurisdiction of the activity under which indebtedness arose, is authorized to certify to the Clerk the amount of the indebtedness, and the Clerk is authorized to withhold the amount from any funds which are disbursed by him to or on behalf of such employee.(7)

§ 7. Misconduct in Elections or Campaigns

Elections and election contests are treated comprehensively elsewhere in this work.(8) However, it should be pointed out here that disputes involving alleged misconduct of a Member may be initiated in the House by the defeated candidate pursuant to the Federal Contested Elections Act.(9) Such contests may also be instituted by means of (a) a protest or memorial filed in the House by an elector of the district involved, (b) a protest or memorial filed by any other person, or (c) a motion made by a Member of the House.(10)

Allegations in election contests pertaining to violations of federal and state corrupt practices acts are considered by the Committee on House Administration.(11)

Prior to the Supreme Court decision in *Powell* v *McCormack*, 395 U.S. 486 (1969) in which the Court held that qualifications of a Member-elect other than age, citizenship, and inhabitancy may not be judged by the House in connection with the initial or final right to a seat of such person, both Houses had adopted the premise that violation of a Corrupt Practices Act, federal or state, constituted grounds for exclusion of a Member-elect (see Frank L. Smith, of Illinois, "Senate Election, Expulsion and Censure Cases from 1793 to 1972," p. 133; *Farr* v *McLane*, 6 Cannon's Precedents 75; *Gill* v *Catlin*, 6 Cannon's Precedents § 79). Although such violations are not grounds for disqualification, evidence thereof may still be given to appropriate prosecuting attorneys for use in an investigation of fraud, misconduct, or irregularities affecting election results.

7. 2 USC § 89a (1958).

8. See Chs. 8, 9, supra.

9. 2 USC §§ 318 et seq., Pub. L. No. 91-138, 83 Stat. 284 (1969). See also Chs. 8, 9, supra.

10. H. REPT. NO. 91–569, 91st Cong. 1st Sess., Oct. 14, 1969, "Federal Contested Elections Act," p. 2.

11. Rule XI, House Rules and Manual § 693 (1973). Prior to the adoption of the Legislative Reorganization Act of 1946, 60 Stat. 812, ch. 455, contests were considered by several House elections committees.

Negligence in Preparing Financial Records

§ 7.1 An elections committee ruled that mere negligence in preparing expenditure accounts to be filed with the Clerk should not, absent fraud, deprive one of his seat in the House when he has received a substantial majority of votes.

In a report on an election contest in the 78th Congress, the Committee on Elections No. 3 ruled that the negligence of the contestee, Howard J. McMurray, and his counsel, in preparing expenditure accounts to be filed with the Clerk should not, absent fraud, deprive the contestee of his seat in the House when he has received a substantial majority of votes.(12) The contestant had charged that the contestee had received contributions and made expenditures in violation of the Federal Corrupt Practices Act.(13)

The statement filed by the contestee with the Clerk had been prepared by an attorney and the figures contained therein reflected contributions and expenditures by two independent campaign committees for the contestee. The committees were not required to file the accounts under the federal act, and the funds handled by them unbeknownst to the contestee were not subject to expenditure limitations in the federal act. The contestee actually should have filed a federal statement showing no receipts or disbursements.(14)

The report stated, "There is no evidence to show that any effort was made to conceal any receipts or expenditures" made on behalf of the candidacy of Mr. McMurray. "Under these circumstances," the report continued, ". . . contestee should not be denied his seat in the House of Representatives on account of this error made in the statement filed by [contestee] with the Clerk of the House of Representatives." The committee, ". . . did not find any evidence of fraud." (15)

A resolution dismissing the contest was agreed to by the House.(16)

Unauthorized Distribution of Campaign Literature

§ 7.2 A pre-election irregularity such as unauthorized

12. 90 CONG. REC. 962, 78th Cong. 2d Sess., Jan. 31, 1944. H. REPT. No. 1032 [H. Res. 426] (contested election case of Lewis D. Thill against Howard J. McMurray, Fifth Congressional District of Wisconsin).

13. H. REPT. No. 1032.

14. Id.

15. *Id.*

16. 90 CONG. REC. 933, 78th Cong. 2d Sess., Jan. 31, 1944 [H. Res. 426].

distribution of campaign literature will not be attributed to a particular candidate where he did not participate therein.

In House Report No. 1172, on the right of Dale Alford, of Arkansas, to a seat in the 86th Congress, the Committee on House Administration determined that a pre-election irregularity such as unauthorized distribution of campaign literature should not be attributed to a particular candidate Where he did not participate therein. The committee report stated: (17)

UNSIGNED CIRCULAR

The subcommittee conducted an intensive investigation of the unsigned pre-election circular used in the campaign. This circular was used in violation of both Arkansas and Federal law. The person responsible for this circular admitted that he used it without the knowledge of either the write-in candidate or his campaign manager. This person was interrogated by the Federal grand jury then sitting at Little Rock and no indictment was brought in.

The distribution of unsigned campaign material is strongly condemned, but there is no evidence showing that the write-in candidate was even aware of the existence of such material. This is one of the several instances wherein the write-in candidate is sought to be held responsible for an irregularity which occurred, but over which he had no control and in which he did not participate. The investigation revealed many irregularities which could erroneously be attributed to either candidate, but the mere existence of an irregularity in any campaign should not be attributed to a particular candidate where he did not participate therein. The subcommittee felt this to be a sound and equitable rule, and it was followed throughout the investigation with respect to both candidates.

A resolution holding that Mr. Alford was duly elected was agreed to by the House on Sept. 8, 1959.(18)

Violation of Corrupt Practices Act

§ 7.3 An elections committee ruled that contestant had not established by a fair preponderance of the evidence that contestee had violated the California Corrupt Practices Act or the Federal Corrupt Practices Act.

In a report in the 76th Congress, the Committee on Elections No. 2, with reference to a contest for a seat from California,(19) stat-

17. H. REPT. No. 1172, p. 19, 86th Cong. 1st Sess.

18. 105 CONG. REC. 18610, 86th Cong. 1st Sess. [H. Res. 380].

19. H. REPT. No. 1783, 76th Cong. 3d Sess., Mar. 14, 1940, on the contested election case of Byron N. Scott, contestant, versus Thomas M. Eaton, contestee, from the 18th District of California.

ed that the pleadings presented several main issues, namely:

> Did the Contestee [Thomas M. Eaton] violate the Corrupt Practices Act of the State of California?
>
> Did the Contestee violate the Federal Corrupt Practices Act? Did the violation of either or both acts directly or indirectly deprive the contestant from receiving a majority of the votes cast at [the] election? [20]

The committee summarily ruled that the contestant had failed to meet the burden of proof and to establish by a fair preponderance of the evidence the issues raised.[1]

A resolution declaring that the contestee was elected was reported to the House but was not acted upon.[2] Mr. Eaton had been sworn in at the convening of the Congress.[3]

§ 7.4 An elections committee admonished a contestee who signed under oath an expenditure statement to be filed with the Clerk when the contestee did not know its contents or the irregularities therein.

In the 78th Congress, the Committee on Elections No. 3 in a report admonished a contestee who signed under oath an expenditure statement to be filed with the Clerk of the House when he was not familiar with its contents or the irregularities therein.[4] Said the committee:

> Neither does it (Committee on Elections No. 3) attempt to condone the action of the contestee, Mr. McMurray, in signing under oath the statement filed with the Clerk of the House of Representatives, without being familiar with the contents of the statement or the irregularities which it contained.[5]

§ 8. Financial Matters; Disclosure Requirements

The House rules (Rule XLIV) require the disclosure, each year, of certain financial interests by Members, officers, and principal assistants. They must file a report disclosing the identity of certain business entities in which they have an interest, as well as certain professional organizations from which they derive an income.[6]

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20. H. Rept. No. 1783.

1. *Id.*

2. 86 CONG. REC. 2885, 76th Cong. 3d Sess., Mar. 14, 1940.

3. 84 CONG. REC. 12, 76th Cong. 1st Sess., Jan. 3, 1939.

4. 90 CONG. REC. 962, 78th Cong. 2d Sess., Jan. 31, 1944. H. REPT. No. 1032 [H. Res. 426]; (contested election case of Lewis D. Thill against Howard J. McMurray, Fifth Congressional District of Wisconsin). See also § 7.1, supra.

5. H. REPT. No. 1032.

6. Rule XLIV, *House Rules and Manual* § 940 (1973)

Rule XLIV of the rules of the House was amended to require disclosure of: (1) honorariums received from a single source totaling $300 or more, and (2) each creditor to whom was owed any unsecured loan or other indebtedness of $10,000 or more which was outstanding for a, least 90 days in the preceding calendar year.(7)

The financial statements required by Rule XLIV must be filedannually by Apr. 30.(8)

Improper Fee

§ 8.1 Charges that a Senator had used his position as a subcommittee chairman to attempt to aid a labor leader in avoiding a prison sentence and had received fees for his efforts were investigated in the 90th Congress by a Senate select committee; the committee determined that the payments that had been made were not related to the labor leader or his union.

In the 90th Congress, the Senate Select Committee on Standards and Conduct investigated charges that a Senator—Edward V. Long, of Missouri—had used his position as a subcommittee chairman to attempt to aid a labor leader in staying out of prison and had accepted fees for his efforts from one of the labor leader's lawyers.(9) Statements appeared in several magazines and newspapers that the payments made to the Senator by Morris Shenker, a practicing attorney in St. Louis, Missouri, were made to influence the hearings on invasions of privacy conducted by the Senate Judiciary Subcommittee on Administrative Practice and Procedure, of which the Senator was Chairman, for the purpose of assisting James Hoffa of the International Teamsters Union.(10)

7. 116 CONG. REC. 17012, 91st Cong. 2d Sess., May 26, 1970 [H. Res. 796].

A resolution reported by the Committee on Standards of Official Conduct, amending Rule XLIV to revise the financial disclosure requirements of that rule, is not a privileged resolution under Rule XI clause 22. 116 CONG. REC. 17012, 91st Cong. 2d Sess., May 26, 1970 [H. Res. 971, providing for consideration of H. Res. 796].

The loans disclosure provision was included following allegations in 1969 that a member of the House Committee on Banking and Currency had owed banks more than $75,000. See H. REPT. No. 91–938, 91st Cong. 2d Sess., and "Congress and the Nation" vol. III, 1969–1972, p. 426, Congressional Quarterly, Inc.

8. Rule XLIV, *House Rules and Manual* § 940 (1973).

9. 113 CONG. REC. 30096–98, 90th Cong. 1st Sess., Oct. 25, 1967.

10. *Id.* at p. 30096.

The select committee conducted an investigation and concluded that the payments made to the Senator by Mr. Shenker between 1961 and 1967 were for professional legal services, and that they had no relationship to Mr. Hoffa or to the Teamsters Union. The committee also concluded that the payments had no connection with the Senator's "duties or activities as Chairman of the Subcommittee on Administrative Practice and Procedure, the Subcommittee hearings or Senator Long's duties or activities as a Member of the Senate.(11)

Abuses in Introducing Immigration Bills

§ 8.2 Charges that bribes were paid to Senate employees for the introduction of private immigration bills to help Chinese seamen avoid deportation were investigated by a Senate select committee in the 91st Congress; the committee found no evidence of misconduct by any Senator or Senate employee.

In the 91st Congress,(12) the Chairman(13) of the Senate Select Committee on Standards and Conduct discussed on the Senate floor a report of the committee which had been submitted that day dealing with an investigation of the introduction of private immigration bills in the Senate for the relief of Chinese crewmen during the 90th and 91st Congresses.(14) Statements had been made in the media that some Senators or their aides received gifts and campaign contributions for introducing bills to enable Chinese ship-jumpers to escape deportation as the result of illegal stays in this country.

The chairman stated that more than 600 such bills had been introduced during the two Congresses, a great increase over the average number that had been introduced in prior Congresses. He pointed out that when the matter had first come to the committee's attention in September 1969, he communicated with the majority and minority leadership about strict enforcement of procedures for the introduction of bills. ". . . [T]he leadership responded immediately," he said, "by invoking the practice that for future bills to be introduced, they had to have the actual signature and the presence of a sponsoring Senator."(15)

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11. *Id.* at p. 30098.

12 116 CONG. REC. 17361, 17362, 91st Cong. 2d Sess., May 28, 1970.

13. 13. John Stennis (Miss.).

14. 116 CONG. REC 17360, 91st Cong. 2d Sess., S. REPT. No. 91–911.

15. *Id.* at p. 17362.

The committee and its staff investigated the more than 600 bills to ascertain if any abuses had taken place. The chairman concluded: ". . . I can safely summarize . . . by saying that we found no evidence of any misconduct by any Senator or any Senate employee, nor did we believe from the information we obtained that there was any reason for further proceedings." (16)

Auto-leasing Agreements

§ 8.3 A Senate select committee determined that it was improper for a company to make an agreement with a Senate committee for the leasing of cars for the private use of Senators.

On Aug. 24, 1970, the Chairman (17) of the Senate Select Committee on Standards and Conduct reported to the Senate the results of the committee's investigation and recommendations respecting the leasing by certain Senators of automobiles from an automobile manufacturing company under specially favorable terms. The chairman declared that one company had made an agreement directly with a Senate committee for the leasing of cars for the private use of Senators. A Senator receiving a car paid the amount of the lease at a price less than that offered the general public. Appropriated funds were not used.(18) The chairman said that the leasing arrangements were made for promotional purposes by the company, without intent to exercise improper influence. He added that the committee had concluded that the leasing arrangements with Senators violated no law nor any Senate rule,(19) but declared:

> . . . [T]he practice of the one company of making an agreement directly with a Senate committee for the leasing of cars for the private use of Senators clearly is improper. A Senate committee by itself does not have the authority to make such a contract, which in our opinion is void and unenforcible. Although these lease agreements do not bind the Senate or any of its committees, we believe this practice by the committees should be terminated at once.
>
> After carefully considering the benefits and the implications of the leasing of cars to Senators, our committee makes the following advisory recommendation for the guidance of the various Senators involved: Existing private leases of automobiles to Senators at favorable rates should be terminated at or before the end of the current model year. These leases should not be renewed. In making pri-

16. *Id.*

17. John Stennis (Miss.).

18. 116 CONG. REC. 29880, 91st Cong. 2d Sess.

19. *Id.*

vate agreements in the future for the leasing of automobiles, Senators should not accept any favorable terms and conditions that are available to them only as Senators.[20]

Investments

§ 8.4 The House reprimanded a Member for certain conduct occurring during prior Congresses involving conflicts of interest (in violation of a generally accepted standard of ethical conduct applicable to all government officials but not enacted into permanent law at the time of the violation), as well as failure to make proper financial disclosures in accordance with a House rule then in effect, but declined to punish the Member for other prior conduct under the circumstances of the case.

On July 29, 1976,[21] the House agreed to a resolution adopting the report (H. Rept. No. 94–1364) of the Committee on Standards of Official Conduct which reprimanded a Member (1) for failing to disclose, in violation of Rule XLIV (requiring financial disclosure of Members) his ownership of certain stock; and (2) for his investment in a Navy bank while actively promoting its establishment, in violation of the Code of Ethics for Government Service. The report also declined to punish the Member for his sponsorship of legislation in 1961 in which he had a direct financial interest, since an extended period of time had elapsed, and the Member had been continually re-elected by constituents with apparent knowledge of the circumstances.

§ 9. Abuses in Hiring, Employment, and Travel

The Code of Official Conduct provides that a Member may not retain anyone on his clerk-hire allowance who does not perform duties commensurate with the compensation he receives.[1]

By statute, employees of the House may not divide any portion of their salaries or compensation with another,[2] nor may they sublet part of their duties to another.[3] Violation of these provisions is deemed cause for removal from office.[4]

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20. *Id.*

21. See the proceedings relating to H. Res. 1421, 94th Cong. 2d Sess.

1. Rule XLIII clause 8, *House Rules and Manual* § 939 (1973).

2. 2 USC § 86.

3. 2 USC § 87.

4. 2 USC § 90.

No employee of either House of Congress shall sublet to or hire an-

Professional staff members of standing committees may not engage in any work other than committee business, and may not be assigned duties other than those pertaining to committee business.(5)

A statute prohibits the employment, appointment, or advancement by a public official of a relative to a civilian position in the agency in which the official is serving or over which he exercises jurisdiction or control.(6) This statute, sometimes called the antinepotism law, became effective on Dec. 16, 1967; it has no retroactive effect and is inapplicable to those appointed prior thereto.(7)

other to do or perform any part of the duties or work attached to the position to which he was appointed. 2 USC § 101.

5. Rule XI clause 29 (a)(3)(B), *House Rules and Manual* § 737(a) (1973).

6. 5 USC § 3110, Pub. L. No. 90–206, 81 Stat. 640 (1967).

"Public official" includes a Member of Congress. "Relative" means an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister. 5 USC § 3110(a).

7. Pub. L. No. 90–206 § 221(c), 81 Stat. 640 (1967).

Campaign Activities and Clerk-hire Guidelines

§ 9.1 Guidelines have been issued relative to the use of clerical personnel in the campaign activities of Members.

In 1973, the Committee on Standards of Official Conduct promulgated an advisory opinion establishing clerk-hire guidelines. It stated in part:(8)

> This Committee is of the opinion that the funds appropriated for Members' clerk-hire should result only in payment for personal services of individuals, in accordance with the law relating to the employment of relatives, employed on a regular basis, in places as provided by law, for the purpose of performing the duties a Member requires in carrying out his representational functions.
>
> The Committee emphasizes that this opinion in no way seeks to encourage the establishment of uniform job descriptions or imposition of any rigid work standards on a Member's clerical staff. It does suggest, however, that it is improper to levy, as a condition of employment, any responsibility on any clerk to incur personal expenditures for the primary benefit of the Member or of the Member's congressional office operations. . . .
>
> The opinion clearly would prohibit any Member from retaining any person from his clerk-hire allowance under ei-

8. 119 CONG. REC. 23691, 23692, 93d Cong. 1st Sess., July 12, 1973.

ther an express or tacit agreement that the salary to be paid him is in lieu of any present or future indebtedness of the Member, any portion of which may be allocable to . . . campaign obligations, or any other nonrepresentational service.

In a related regard, the Committee feels a statement it made earlier, in responding to a complaint, may be of interest. It states: "As to the allegation regarding campaign activity by an individual on the clerk-hire rolls of the House, it should be noted that, due to the irregular time frame in which the Congress operates, it is unrealistic to impose conventional work hours and rules on congressional employees. At some times, these employees may work more than double the usual work week—at others, some less. Thus employees are expected to fulfill the clerical work the Member requires during the hours he requires and generally are free at other periods. If, during the periods he is free, he voluntarily engages in campaign activity, there is no bar to this. There will, of course, be differing views as to whether the spirit of this principle is violated, but this Committee expects Members of the House to abide by the general proposition."

Misusing Travel Funds

§ 9.2 A party caucus removed a Member from his office as chairman of a committee based on a report disclosing certain improprieties concerning his travel expenses as well as an abuse of clerk-hiring practices.

In 1967, a party caucus removed a Member [9] from his position as Chairman of the Committee on Education and Labor after a subcommittee of the Committee on House Administration had reported improprieties in certain of his travel expenses during the 89th Congress, and in the clerk-hire status of his wife.[10] Subsequent to the report of the subcommittee and prior to the organization of the 90th Congress, the Democratic Party Members-elect, meeting in caucus, voted to remove him from his office as Chairman of the House Committee on Education and Labor.[11]

§ 9.3 In an attempt to curb the misuse of travel funds, the cancellation of all airline credit cards which had been issued to a committee was ordered by the Committee on House Administration.

In September 1966, as the result of protests made by certain Members on the Committee on Education and Labor, the Committee on House Administration, acting through its Chairman, directed the cancellation of all air-

9. Adam Clayton Powell (N.Y.).

10. H. REPT. NO. 2349, 89th Cong. 2d Sess.

11. H. REPT. NO. 27, 90th Cong. 1st Sess.

line credit cards which had been issued to the Committee on Education and Labor and notified its Chairman [12] that all future travel must be specifically approved by the Committee on House Administration prior to undertaking the travel.[13]

The reason for the action was set forth in a report prepared by a select committee in the 90th Congress: [14]

> During the 89th Congress open and widespread criticism developed with respect to the conduct of Representative Adam Clayton Powell, of New York. This criticism emanated both from within the House of Representatives and the public, and related primarily to Representative Powell's alleged contumacious conduct toward the courts of the State of New York and his alleged official misconduct in the management of his congressional office and his office as chairman of the Committee on Education and Labor. There were charges Representative Powell was misusing travel funds and was continuing to employ his wife on his clerk-hire payroll while she was living in San Juan, P.R., in violation of Public Law 89–90, and apparently performing few if any official duties.

§ 10. Communications With Federal Agencies

Guidelines relative to communications that may properly be made by a Member to a federal agency on behalf of a constituent have been issued by the Committee on Standards of Official Conduct: [15]

> REPRESENTATIONS
>
> This Committee is of the opinion that a Member of the House of Representatives, either on his own initiative or at the request of a petitioner, may properly communicate with an Executive or Independent Agency on any matter to:
>
> Request information or a status report;
>
> Urge prompt consideration;
>
> Arrange for interviews or appointments;
>
> Express judgment;
>
> Call for reconsideration of an administrative response which he believes is not supported by established law, Federal Regulation or legislative intent;
>
> Perform any other service of a similar nature in this area compatible with the criteria hereinafter expressed in this Advisory Opinion.
>
> PRINCIPLES TO BE OBSERVED
>
> The overall public interest, naturally, is primary to any individual mat-

12. Adam Clayton Powell (N.Y.).

13. H. REPT. NO. 27, 90th Cong. 1st Sess.

14. *Id.* at p. 1.

15. The Chairman (Melvin Price [Ill.]) of the Committee on Standards of Official Conduct inserted in the *Congressional Record* an advisory opinion, promulgated by that committee pursuant to Rule XI clause 19(e)(4), establishing guidelines for Members and employees in communicating with departments and agencies of the executive branch on constituent matters. 116 CONG. REC. 1077, 1078, 91st Cong. 2d Sess., Jan. 26, 1970 [H. Res. 796].

ter and should be so considered. There are also other self-evident standards of official conduct which Members should uphold with regard to these communications. The Committee believes the following to be basic:

1. A Member's responsibility in this area is to all his constituents equally and should be pursued with diligence irrespective of political or other considerations.

2. Direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is unwarranted abuse of the representative role.

3. A Member should make every effort to assure that representations made in his name by any staff employee conform to his instruction.

CLEAR LIMITATIONS

Attention is invited to United States Code, Title 18, Sec. 203(a) which states in part: "Whoever . . . directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another—

(1) at a time when he is a Member of Congress . . . or

(2) at a time when he is an officer or employee of the United States in the . . . legislative . . . branch of the government . . . in relation to any proceedings, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission . . .

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States."

The Committee emphasizes that it is not herein interpreting this statute but notes that the law does refer to *any compensation, directly, or indirectly, for services by himself or another.* In this connection, the Committee suggests the need for caution to prevent the accrual to a Member of any compensation for any such services which may be performed by a law firm in which the Member retains a residual interest.

It should be noted that the above statute applies to officers and employees of the House of Representatives as well as to Members.

In 1970, Martin Sweig, who had served as administrative assistant to Speaker John W. McCormack, of Massachusetts, until October 1969, was acquitted in federal district court in New York of conspiracy in connection with certain activities conducted from the Speaker's office. Mr. Sweig and Nathan Voloshen had allegedly been engaged in a practice whereby Mr. Voloshen, in exchange for the receipt of fees from persons with matters before government agencies, promised to exert the influence of the Speaker's office in respect to such agencies.(16)

16. *U.S.* v *Sweig,* 316 F Supp 1148 (D.C. S.N.Y. 1969).

§ 11. Acceptance of Foreign Gifts and Awards

The Constitution prohibits any person holding federal office from accepting a gift from a foreign state without the consent of the Congress.[17] However, Congress has provided by statute for employees of the federal government to accept or retain such a gift if of minimal value.[18] In addition, an employee may accept a gift of more than minimal value when refusal would cause offense or embarrassment to the foreign relations of the United States; in that case, the gift is deemed to be property of the United States and not of the donee.[19]

B. NATURE AND FORMS OF DISCIPLINARY MEASURES

§ 12. In General; Penalties

The authority of the House of Representatives over the internal discipline of its Members flows from the Constitution, and the enforcement of disciplinary proceedings by the House against a Member is carried out under its rulemaking power.[20]

There are several different kinds of disciplinary measures that have been invoked by the House against one of its Members. These include (1) expulsion, (2) exclusion,[21] (3) censure, (4) sus-

17. U.S. Const. art. I, § 9, clause 8.

18. 5 USC § 7342(c)(1). See also § 515 of Pub. L. No. 95-105 for revision of this statute. The Select Committee on Ethics [See CONG. REC. (daily ed.), 95th Cong. 1st Sess., May 18, 1977] and the Committee on Standards of Official Conduct have promulgated regulations and advisory opinions applicable to the acceptance of foreign gifts and decorations.

19. 5 USC § 7342(c)(2). "Employee" is defined for the purpose of this section to include a Member of Congress and members of his family and household [5 USC 7342(a)(1) (E) and (F)].

20. U.S. Const. art. I, § 5, clause 1 states: "Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members. . . ."

U.S. Const. art. I, § 5, clause 2 provides: "Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two-thirds, expel a Member."

21. Exclusion is apparently no longer a disciplinary procedure to be invoked in cases involving the misconduct of Members but is invoked only for failure to meet qualifications of Members as defined by the Constitution. The United States Supreme Court in

pension of voting rights and other privileges, (5) imposition of a fine, (6) deprivation of seniority status, and (7) requiring an apology.(1)

Imprisonment is a form of punishment that is theoretically within the power of the House to impose, but such action has never been taken by the House against a Member.(2)

Jurisdiction over alleged misconduct rests with the Committee on Standards of Official Conduct. The committee is charged with the responsibility of investigating alleged violations of the Code of Official Conduct by a Member, officer, or employee of the House, or violations by such person of any law, rule, regulation, or other standard of conduct applicable in the performance of his duties or the discharge of his responsibilities. The committee in such cases, after notice and hearing, is directed to recommend to the House by resolution or otherwise such action as the committee may deem appropriate in the circumstances.(3)

Each elected officer of the House (who is not a Member) with supervisory responsibilities is authorized to remove or otherwise discipline any employee under his supervision.(4)Clerks to Members are subject to removal at any time with or without cause.(5)

1963, in *Powell* v *McCormack*, 395 U.S. 486, held that the power of the House to judge the qualifications of its Members (art. I, § 5, clause 1) was limited to the constitutional qualifications of age, citizenship, and inhabitancy (art. I, § 2, clause 2). For further discussion of exclusion, see § 14, infra.

1. See §§ 13 et seq., infra.

2. The U.S. Supreme Court has stated, "[T]he Constitution expressly empowers each House to punish its own Members for disorderly behavior. We see no reason to doubt that this punishment may in a proper case be imprisonment, and that it may be [for] refusal to obey some rule on that subject made by the House for the preservation of order." *Kilbourn* v *Thompson*, 103 U.S. 168, 189, 190 (1880).

3. Rule XI clause 19, *House Rules and Manual* § 720 (1973).

The Senate created a Select Committee on Standards and Conduct, 110 CONG. REC. 16938, 88th Cong. 2d Sess., July 24, 1964 [S. Res. 338, amended], and adopted a Code of Conduct, 114 CONG. REC. 7406, 90th Cong. 2d Sess., Mar. 22, 1968 [S. Res. 266], Rules XLI, XLII, XLIII, XLIV, *Senate Manual*. 93d Cong. 1st Sess. (1973).

4. 2 USC § 60–1, 84 Stat. 1190, Pub. L. No. 91–510 (1970). See also 2 USC § 85.

5. 2 USC § 92.

Multiple Penalties

§ 12.1 A House committee recommended a resolution pro-

viding for the imposition of multiple forms of punishment on a Member-elect, including censure, fine, and loss of seniority; subsequently the House adopted a resolution providing for a fine and loss of seniority.

At the commencement of the 91st Congress, the House agreed to a resolution (1) authorizing the Speaker to administer the oath to Representative-elect Adam Clayton Powell, of New York, but (2) providing for a fine of $25,000 to be deducted on a monthly basis from his salary, (3) reducing his seniority to that of a first-term Congressman (thus eliminating consideration of any prior service in the computation of seniority), and (4) specifying that Mr. Powell must take the oath before Jan. 15, 1969, or his seat would be declared vacant.(6)

Disciplinary Actions Against Committee Chairmen

§ 12.2 The authority of the chairman of a committee of the House was curtailed by the House through adoption of a resolution that restricted the power of the chairman to provide for funds for investigations by subcommittees of that committee.

In the 88th Congress, the Chairman(7) of the House Committee on Education and Labor was disciplined by the House through adoption of a resolution providing that funds for sub-

6. 115 CONG. REC. 29, 34, 91st Cong. 1st Sess., Jan. 3, 1969 [H. Res. 2].

Similar recommendations plus a recommendation of censure had been considered and rejected in the previous Congress. See H. Res. 278, 90th Cong. 1st Sess., 113 CONG. REC. 4997, Mar. 1, 1967, for the resolution embodying the recommendations of the select committee pursuant to H. Res. 1. The motion for the previous question on this resolution was defeated (113 CONG. REC. 5020), and a substitute amendment excluding the Member-elect was proposed and adopted (113 CONG. REC. 5037, 5038).

With respect to the committee's recommendation, the committee Chairman, Emanuel Celler (N.Y.), stated: "You will note that we went beyond censure. Never before has a committee devised such punishment short of exclusion which went beyond censure." (113 CONG. REC. 4998).

In opposing the multiple punishment, Representative John Conyers, Jr. (Mich.) stated: "A fine and a loss of seniority is a completely unprecedented procedure for the House to use in punishing a Member. There is simply no precedent whatsoever for the House to punish its Members other than by censuring or expelling." (113 CONG. REC. 5007).

7. Adam Clayton Powell (N.Y.).

committee investigations be made directly available to the subcommittees.(8)

The chairman of the committee had requested authorization to withdraw $697,000 from the contingent fund of the House for expenses of committee investigations. However, the authorizing resolution, as amended, provided only $200,000, of which $150,000 was made available to each of the committee's six subcommittees (at $25,000 each).(9) The amendment (offered by the Committee on House Administration) read:

> . . . Page 1, line 5, strike out "$697,000" and insert "$200,000".
>
> Page 1, line 11, after "House" insert a period and strike out all that follows down through and including the period on page 2, line 1 and insert in lieu thereof the following: "Of such amount $25,000 shall be available for each of six subcommittees of the Committee on Education and Labor, and not to exceed $50,000 shall be available to the Committee on Education and Labor. All amounts authorized to be paid out of the contingent fund by this resolution shall, in the case of each subcommittee, be paid on vouchers authorized and signed by the chairman of the subcommittee, cosigned by the chairman of the committee and approved by the Committee on House Administration; in the case of the committee, such amount shall be paid on vouchers authorized and signed by the chairman of the committee and approved by the Committee on House Administration."

There had been alleged abuses in the hiring of committee staff, and one of the members of the committee reported to the House that, "we (the members of the Committee on Education and Labor) had a bipartisan front in the House Administration Committee to try to control the expenditure of these funds." (10)

Mr. John M. Ashbrook, of Ohio, a member of the Committee on Education and Labor, explained the reason for the action: (11)

> MR. ASHBROOK: Mr. Speaker, I wish to commend the Committee on House Administration for this action in which it has vindicated the entire membership of this House. Because of the manner in which the affairs of the Committee on Education and Labor have been conducted during the past 2 years, I feel that each Member of this body was in the position of deciding whether or not we should condone and continue the policies which will now be held in close check due to the timely action of this watchdog committee.
>
> Some will say that the cuts are too deep. I think not. As the gentleman from Georgia [Mr. Landrum] so well put it, it will very definitely mean cutting back on some of the employees whom we never saw, rarely heard of,

8. 109 CONG. REC. 3525–31, 88th Cong. 1st Sess., Mar. 6, 1963, H. REPT. NO. 61 [H. Res. 254].

9. 109 CONG. REC. 3525, 88th Cong. 1st Sess.

10. *Id.* at p. 3526.

11. *Id.* at p. 3530.

and little benefited by. It will mean fewer opportunities for lavish spending, fewer trips, and without doubt, less waste of taxpayers' money. The basic work of our committee will be accomplished on the fourth floor suite of the Old House Office Building. It will be accomplished by Members of Congress whose pay is not charged against this committee. If we buckle down and proceed expeditiously, we can do as much or more with less costly expenditure. The effort of the committee members and not the dollars expended will be the true test of accomplishment.

Mr. Joe D. Waggonner, Jr., of Louisiana, gave further reasons for the action taken: (12)

MR. WAGGONNER: Mr. Speaker, as a member of the House Administration Committee and a member of the Subcommittee on Accounts of that committee, I have consistently opposed the granting of Chairman Powell's budget request for $697,000. I have maintained that his budget should be cut to the bare essential needed for his committee to function because of the unacceptable manner in which he has served in his capacity as chairman. I would advocate even greater cuts in his budget except for the fact that I do not want to cripple the good men who are members of his committee and who have consistently done a good job. With the addition of further restrictions as to how and by whom this money is spent and for what purpose it is spent, I hope we can by this action, restore the faith of the people in this committee and in the Congress. Certainly that is my desire.

12. *Id.*

§ 12.3 The membership of a House committee, in a move to discipline its chairman, amended the rules of the committee so as to transfer authority from the chairman to the membership and the subcommittee chairmen.

On Sept. 22, 1966, the membership of the House Committee on Education and Labor, in a move to discipline Chairman Adam Clayton Powell, of New York, amended the rules of the committee so as to transfer authority from the chairman to the membership and the subcommittee chairmen. A copy of the newly adopted rules was printed in the *Congressional Record*.(13)

Mr. Glenn Andrews, of Alabama, described the occasion to the House: (14)

. . . [A]s a member of the House Education and Labor Committee of this body, I was present at this morning's historic meeting [which was instrumental] in the action which was taken to limit the powers of the chairman of the Education and Labor Committee.

Mr. John M. Ashbrook, of Ohio, stated to the House reasons set forth for the action: (15)

13. 112 CONG. REC. 23797, 23798, 89th Cong. 2d Sess., Sept. 26, 1966.

14. 112 CONG. REC. 23722, 89th Cong. 2d Sess., Sept. 22, 1966.

15. 112 CONG. REC. 23308, 89th Cong. 2d Sess., Sept. 20, 1966.

. . . I for one will vote to strip him [Mr. Powell] of all powers or for any partial limitations on his powers because, on the merits, he has exercised them in such a manner as to bring discredit on the entire House of Representatives. . . .

. . . [O]ur chairman has been openly accused of 3 number of violations of House Rules. . . . It is rumored that Mr. Powell's wife gave him a power of attorney to sign [her House of Representatives salary] checks. A House rule apparently makes it illegal for Mrs. Powell to be paid for work in Puerto Rico.

§ 12.4 The members of a House committee took action against the chairman of that committee by restricting his authority to appoint special subcommittees.

In the 83d Congress, first session,(16) during debate on a resolution (17) relating to expenditures by the House Committee on Government Operations, mention was made of the fact that the committee had recently disciplined its chairman (18) by withdrawing from him authority to appoint special subcommittees, a blanket authority which it had granted to him at the beginning of the session.(19) The chairman had created some 12 or 13 special subcommittees, and it was alleged that "these subcommittees were undertaking to operate outside the jurisdiction of the committee and there was a suggestion made that they were infringing on the jurisdiction of the regularly established subcommittees." (20) It was also alleged that the chairman had not consulted with the ranking minority member or the committee membership in creating the subcommittees, and that he appointed some minority members to the special subcommittees without consulting the Democratic (minority) members of the committee.(21)

The committee membership, in July 1953, reacquired the power to authorize special subcommittees. The committee rules were changed to provide that subcommittees could be created upon motion of the chairman but subject to the approval of the committee.(22)

In addition, the Committee on House Administration reported out a resolution (H. Res. 339),

16. 99 CONG. REC. 10360–63, July 29, 1953.
17. H. Res. 339, amending H. Res. 150, 83d Cong. 1st Sess. [H. REPT. NO. 1020].
18. Clare Hoffman, of Michigan.
19. 99 CONG. REC. 10362, remarks of Mr. Charles Halleck, of Indiana.
20. *Id.*
21. 99 CONG. REC. 10362, remarks of Mr. John McCormack, of Massachusetts.
22. 99 CONG. REC. 10362, remarks of Mr. Charles Halleck, of Indiana.

after a hearing on July 22, 1953, at which all members of the Committee on Government Operations were invited to be present. The resolution was declared to be ". . . a solution of a situation which was described as intolerable by a considerable number of the members of the Committee on Government Operations." (23)

The resolution allotted specific funds to all but one of the regular subcommittees, to be drawn on the voucher of the subcommittee chairman, and allotted the remainder for committee expenses, expenses of special subcommittees and the expenses of one regular subcommittee.(24) (Note: Under H. Res. 150, which was amended by H. Res. 339, provision had been made for having all vouchers signed by the committee chairman.) (25)

§ 13. Expulsion

The House has the power to expel a Member under article I, section 5, clause 2 of the U.S. Constitution. It provides that each House may "with the concurrence of two thirds, expel a Member." (26)

Expulsion is the most severe sanction that can be invoked against a Member. The Constitution provides no explicit grounds for expulsion, but the courts have set forth certain guidelines that may be applied in such cases. Thus, the U.S. Supreme Court has remarked: "The right to expel extends to all cases where the offense is such as [to be] inconsistent with the trust and duty of a Member." (27)

One judge of the United States Court of Appeals for the District of Columbia said in describing the elements of an analogous proceeding: "That action was rooted in the judgment of the House as to what was necessary or appropriate for it to do to assure the integrity of its legislative performance and its institutional acceptability to the people at large as a serious and responsible instrument of government." (28)

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23. 99 CONG. REC. 10360, remarks of Mr. Karl M. LeCompte, of Iowa.

24. 99 CONG. REC. 10360, H. Res. 339.

25. Mr. Hoffman had raised a question of personal privilege and had addressed the matter prior to House consideration of H. Res. 339. See 99 CONG. REC. 10351–59, July 29, 1953.

26. See *House Rules and Manual* §§ 62 et seq. (1973). See also *Powell* v *McCormack*, 395 U.S. 486, 507, footnote 27 (1969).

27. *In re Chapman*, 166 U.S. 661, 669 (1897).

28. *Powell* v *McCormack*, 395 F2d 577, concurring opinion of Judge McGovan, p. 607 (C.A., D.C. 1968), reversed on other grounds, 395 U.S. 486.

Expulsion is described by Cushing as ". . . in its very nature discretionary, that is, it is impossible to specify beforehand all the causes for which a member ought to be expelled and, therefore, in the exercise of this power, in each particular case, a legislative body should be governed by the strictest justice; for if the violence of party should be let loose upon an obnoxious member, and a representative of the people discharged of the trust conferred on him by his constituent, without good cause, a power of control would thus be assumed by the representative body over the constituent, wholly inconsistent with the freedom of election." (29)

Expulsion is generally administered only against Members, i.e., those who have been sworn in.(30) However, in one case, at the beginning of the Civil War, a Member-elect to the House who did not appear and who had taken up arms against the United States, was "expelled," no one having raised the point that he had not been sworn in.(1)

"[A Member might be expelled] for that behavior which renders him unfit to do his duties as a Member of the House or that present conditions of mind or body which makes it unsafe or improper for the House to have him in it." 2 Hinds' Precedents § 1286.

In the 63d Congress (1913) the House Committee on Elections No. 1 stated in its report (H. REPT. NO. 185; 6 Cannon's Precedents § 78) that the power of the House to expel one of its Members is unlimited—a matter purely of discretion to be exercised by a two-thirds vote from which there is no appeal. However, in 1900, the majority report of the House special committee in the exclusion case of Brigham H. Roberts, Member-elect from Utah, 56th Cong., H. REPT. NO. 85, Pt. II, 1 Hinds' Precedents § 476 stated: "1. Neither House of Congress has ever expelled a Member for acts unrelated to him as a Member or inconsistent with his public trust and duty as such. 2. Both Houses have many times refused to expel where the guilt of the Member was apparent; where the refusal to expel was put upon the ground that the House or Senate, as the case might be, had no right to expel for an act unrelated to the Member as such, or because it was committed prior to his election."

29. Cushing, *Elements of the Law and Practice of Legislative Assemblies in the United States of America,* 2d ed., 1866, § 625.

30. See *Powell* v *McCormack,* 395 U.S. 486, 507 (1969) in which the court said: "Powell was 'excluded' from the 90th Congress, i.e., he was not administered the oath of office and was prevented from taking his seat. If he had been allowed to take the oath and subsequently had been required to surrender his seat, the House's action would have constituted an 'expulsion'."

1. 2 Hinds' Precedents § 1262. For a discussion of the power to expel a

The House has expelled only two Members and one Member-elect. All instances occurred during the Civil War and in each the person was in rebellion against the United States or had taken up arms against it.(2)

The constitutional power of expulsion has been applied to the conduct of Members during their terms of office and not to action taken by them prior to their election.(3)

Where a Member of Congress has been convicted of a crime, neither the House nor the Senate will normally act to consider expulsion until the judicial processes have been exhausted.(4)

Expulsion proceedings are initiated by the introduction of a resolution containing explicit charges(5) and which may provide for a committee to investigate and report on the matter.(6) While referral has been to the Committee on the Judiciary or to a select committee,(7) such a resolution now would be referred to the Committee on Standards of Official Conduct [see Rule XI clause 19, *House Rules and Manual* (1973)].

In proceedings for expulsion, the House, having declined to permit a trial at the bar, may allow a Member to be heard on his own defense by unanimous consent, or through time yielded by the Member calling up the resolution, and to present a written defense, but not to appoint another Member to speak on his behalf.(8)

A resolution of expulsion should be limited in its application to one

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Member-elect, see 1 Hinds' Precedents § 476.

2. 2 Hinds' Precedents §§ 1261, 1262.

The Senate has expelled 15 Senators, most of them for activities related to the Civil War.

Senator William Blount (Tenn.) was expelled in 1797 on charges of conspiracy. 2 Hinds' Precedents § 1263. For the Civil War cases, see 2 Hinds' Precedents §§ 1266–1270.

In 1877, the Senate annulled its action in expelling a Senator during the Civil War. 2 Hinds' Precedents § 1243.

3. 6 Cannon's Precedents §§ 56, 238; 2 Hinds' Precedents §§ 1284–1286, 1288; 1 Hinds' Precedents § 481. See also *Powell* v *McCormack,* 395 U.S. 486, 508, 509 (1969).

4. *Burton* v *U.S.,* 202 U.S. 344 (1906); 2 Hinds' Precedents § 1282; 6 Cannon's Precedents § 258.

5. 2 Hinds' Precedents §§ 1261, 1262.

6. 2 Hinds' Precedents §§ 1649, 1650; 3 Hinds' Precedents § 2653; 6 Cannon's Precedents § 400.

7. 2 Hinds' Precedents §§ 1621, 1656; 3 Hinds' Precedents §§ 1831, 1844.

In one recent Congress, however, a resolution to expel was referred to the Committee on the Judiciary, 115 CONG. REC. 41011, 91st Cong. 1st Sess., Dec. 23, 1969 [H. Res. 772].

8. 2 Hinds' Precedents §§ 1273, 1275 1286.

Member only, though several may be involved. Separate resolutions (and separate reports) should be prepared on each Member.(9)

The expulsion of a Member gives rise to a question of privilege.(10) Floor debate is under the hour rule.(11)

Where a Member resigns while expulsion proceedings against him are being considered, the committee may be discharged from further action thereon, the proceedings discontinued,(12) or the House may adopt a resolution censuring the resigned Member.(13)

The penalty for conviction under certain statutes applicable to Members sometimes includes a prohibition against holding any office of honor, trust, or profit under the United States.(14) Conviction does not automatically result in loss of office for a Member, however; he must be expelled by the House or Senate, as the case may be.(15)

In re Hinshaw

§ 13.1 A resolution (H. Res. 1392) calling for the expulsion of a Member was reported adversely by the Committee on Standards of Official Conduct where the Member had been convicted of bribery under California law for acts occurring while he served as a county tax assessor and before his election to the House, and where his appeal from the conviction was still pending; the committee found that although the conviction related to Mr. Hinshaw's moral turpitude, it did not relate to his official

9. 2 Hinds' Precedents § 1275.

10. 3 Hinds' Precedents § 2648; 6 Cannon's Precedents § 236.

11. 8 Cannon's Precedents § 2448.

12. 6 Cannon's Precedents § 238; 2 Hinds' Precedents § 1275.

13. 2 Hinds' Precedents §§ 1239, 1273.

14. See, for example, the statutes listed below:

18 USC § 201—Soliciting or receiving a bribe or anything of value for or because of any official act performed or to be performed.

18 USC § 203—Soliciting or receiving any outside compensation for particular services.

18 USC § 204—Prohibition against practice in Court of Claims by Member.

18 USC § 2381—Treason.

18 USC § 2385—Advocating overthrow of government.

18 USC § 2387—Activities adversely affecting armed forces.

15. U.S. Const. art. I, § 5, clause 2; see *Burton* v *U.S.*, 202 U.S. 344 (1906). It is questionable under the doctrine of *Powell* v *McCormack*, 395 U.S. 486 (1969), that such conviction could prevent a person from running for the House or Senate, subsequently.

conduct while a Member of Congress.

On Sept. 7, 1976, the Committee on Standards of Official Conduct submitted its report (H. Rept. 94–1477), *In the Matter of Representative Andrew J. Hinshaw*. The report was referred to the House Calendar and ordered printed. Excerpts from the report are set out below:

The Committee on Standards of Official Conduct, to which was referred the resolution (H. Res. 1392), resolving that Representative Andrew J. Hinshaw be expelled from the House of Representatives, having considered the same, reports adversely, thereupon, and recommends that the resolution be not agreed to.

PART I.—SUMMARY OF REPORT

House Resolution 1392 seeks the expulsion of Representative Andrew J. Hinshaw of California from the U.S. House of Representatives pursuant to article I, section 5, clause 2 of the Constitution. Representative Hinshaw has been convicted of bribery under California law for acts occurring while he served as assessor of Orange County, such acts having been committed prior to his election to Congress. An appeal of the conviction is currently pending before the Fourth Appellate District, Court of Appeal, State of California.

Since his conviction, Representative Hinshaw has complied with House Rule XLIII, paragraph 10 and has not participated in voting either in committee or on the floor of the House.

* * * * *

The committee believes that the House of Representatives, when considering action against a Member who is currently involved in an active, nondilatory, criminal proceeding against him, such as the Hinshaw case, ordinarily should follow a policy of taking no legislative branch action until the conviction is finally resolved. The committee wishes to express clearly, however, that in this case its conclusion is based entirely on the instant set of facts and in no way implies that different circumstances may not call for a different conclusion.

Having considered the facts of this particular case and recognizing that Representative Hinshaw has been convicted under a State law that, while reflecting on his moral turpitude, does not relate to his official conduct while a Member of Congress, it is the recommendation of the Committee on Standards of Official Conduct that House Resolution 1392 be not agreed to.

* * * * *

PART III.—COMMITTEE ACTION

On September 1, 1976, the committee met in executive session to consider House Resolution 1392. This report was adopted on that date by a vote of 10 to 2, a quorum being present.

PART IV.—STATEMENT OF FACTS

Andrew J. Hinshaw is a Member of the House of Representatives representing the 40th District of California. He was first elected to Congress on November 7, 1972, and was sworn in as a Member of the 93d Congress in January 1973. He was reelected in No-

vember 1974 to the 94th Congress and assumed the seat he now occupies on January 14, 1975. Prior to his first election to Congress, Representative Hinshaw served for 8 years as the elected assessor of Orange County, Calif.

Public accusations that Representative Hinshaw had taken bribes while assessor of Orange County first appeared in local newspapers in May 1974. However, it was not until May 6, 1975, that a California State grand jury returned an 11-count indictment against Representative Hinshaw charging him with various felonies, all relating to his official conduct as assessor for Orange County. Eight of the eleven counts were dismissed upon motion prior to trial. A jury trial was had on Representative Hinshaw's "not guilty" plea to the three remaining counts.

On January 26, 1976, a jury found Representative Hinshaw guilty of two of the remaining counts and not guilty of the third. The jury found as true that on May 18, 1972, Representative Hinshaw, then the duly elected assessor for Orange County, Calif., and a candidate for Congress in a primary election, solicited and received a campaign contribution of $1,000 for the purpose of influencing his official conduct as assessor of Orange County; and that on December 13, 1972, after Representative Hinshaw's election to Congress but prior to being seated as a Member thereof, he solicited and received certain stereo equipment as consideration for official action theretofore taken by him as assessor of Orange County. The two acts proved constitute the crime of bribery under California law.

On February 25, 1976, Representative Hinshaw was sentenced to the term provided by law on each count, the terms to run concurrently. California law provides that the crime of bribery is punishable by imprisonment in the State prison for a term of 1 to 14 years and, if an elected official be convicted of bribery, the additional penalty of forfeiture of office and permanent disqualification from holding other elective office in California may be imposed. The trial judge refused to impose the forfeiture and disqualification penalty in Representative Hinshaw's case, holding that it applied only to State officials.

Representative Hinshaw has appealed his conviction, and the appeal is now pending before the Fourth Appellate District, Court of Appeal of California. The time for filing of appellant's brief has been extended until September 12, 1976. No date has yet been set for oral argument. After his conviction, Representative Hinshaw filed for reelection to Congress. In the primary election held on June 8, 1976, Representative Hinshaw was defeated.

PART V.—ANALYSIS OF PRECEDENTS AND POLICIES

The right to expel may be invoked whenever in the judgment of the body a Member's conduct is inconsistent with the public trust and duty of a Member. But, the broad power of the House to expel a Member has been invoked only three times in the history of Congress, all three cases involving treason.

Historically, when a criminal proceeding is begun against a Member, it has been the custom of the House to

defer action until the judicial proceeding is final. The committee recognized the soundness of this course of action when it reported House Resolution 46 (94th Cong. 1st Sess., H. Rept. No. 94–76) adopting rule XLIII, paragraph 10.

In its report, the committee stated it would act "where an allegation is that one has abused his direct representational or legislative position—or his 'official conduct' has been questioned"—but where the allegation involves a violation of statutory law, and the charges are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course.

A "crime," as defined by statutory law, can cover a broad spectrum of behavior, for which the sanction may vary. Due to the divergence between criminal codes, and the judgmental classification of crimes into misdemeanors and felonies, no clear-cut rule can be stated that conviction for a particular crime is a breach of "official conduct." Therefore, rather than specify certain crimes as rendering a Member unfit to serve in the House, the committee believes it necessary to consider each case on facts alone.

Due process demands that an accused be afforded recognized safeguards which influence the judicial proceedings from its inception through final appeal. Although the presumption of innocence is lost upon conviction, the House could find itself in an extremely untenable position of having punished a Member for an act which legally did not occur if the conviction is reversed or remanded upon appeal.

Such is the case of Representative Hinshaw. The charges against him stem from acts taken while county assessor, and allege bribery as defined by California statute. The committee, while not taking a position on the merits of this case, concludes that no action should be taken at this time. We cannot recommend that the House risk placing itself in a constitutional dilemma for which there is no apparent solution.

We further realize that resolution of the appeal may extend beyond the adjournment sine die of the 94th Congress. In fact, no future action may be required since Representative Hinshaw's electorate chose not to renominate him and he has stated, in writing, that he will resign if the appeal goes against him.

This committee cannot be indifferent to the presence of a convicted person in the House of Representatives; it will not be so. The course of action we recommend will uphold the integrity of the House while affording respect to the rights of the Member accused. We recognize that under another set of circumstances other courses of action may be in order; but, in the matter of Representative Andrew Hinshaw, we believe we have met the challenge and our recommendation is well founded.

When House Resolution 1392 was called up as privileged on Oct. 1, 1976, by its sponsor, Mr. Charles E. Wiggins, of California, it was laid on the table without debate.

§ 14. Exclusion

The power of the House to exclude a Member rests upon Article

I, section 5, clause 1 of the Constitution, which provides: "Each House shall be the judge of the elections, returns, and qualifications of its own Members. . . ." The qualifications referred to are those set forth in Article I, section 2, clause 2, of the Constitution, "No person shall be a Representative who shall not have attained to the age of twenty-five years, and have been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen." (16) Neither the Congress nor the House can add to these qualifications, nor can a state.(17)

A Member-elect may be excluded from the House pending an investigation as to his initial and final right to the seat.(18) And although a two-thirds vote is required to expel a Member, only a majority is required to exclude a Member who has been permitted to take the oath of office pending a final determination by the House of his right to the seat.(19) The vote necessary to exclude on the ground of failure to meet one of the constitutional qualifications is a majority of those voting, a quorum being present, regardless of whether a final determination by the House of a Member's right to a seat has been made.(20) A vote on an amendment in the nature of a substitute proposing exclusion is not a vote to expel, and therefore does not require a two-thirds vote of the Members present.(1)

A resolution proposing the exclusion of a Member-elect presents

16. *Powell* v *McCormack,* 395 U.S. 486 (1969). See also § 12, supra.

17. See *Powell* v McCormack, 395 U.S. 486 (1969); *Hellman* v *Collier,* 217 Md. 93, 141 A.2d 908 (1958); *Richardson* v *Hare,* 381 Mich. 304, 160 N.W. 2d 883 (1968); *State ex rel. Chavez* v *Evans,* 29 N. M. 578, 446 P.2d 445 (1968). And see H. REPT. No. 90–27, 90th Cong. 1st Sess., "In Re Adam Clayton Powell, Report of Select Committee Pursuant to H. Res. 1" (1967) p. 30.

18. 113 CONG. REC. 24–26, 90th Cong. 1st Sess., Jan. 10, 1967 [H. Res. 1, relating to the right of Adam Clayton Powell to take the oath].

19. 113 CONG. REC. 17, 90th Cong. 1st Sess., Jan. 10, 1967.

20. See the ruling by Speaker John W. McCormack (Mass.), 113 CONG. REC. 17, 90th Cong. 1st Sess., Jan. 10, 1967; see also 1 Hinds' Precedents §§ 420, 429, 434.

1. See 113 CONG. REC. 5020 90th Cong. 1st Sess., Mar. 1, 1967.

Parliamentarian's Note: In the *Powell* case the Speaker responded to a parliamentary inquiry as to the vote required on an amendment in the nature of a substitute proposing exclusion, stating that only a majority vote was required to adopt the amendment, but the Speaker was not called upon to rule whether the resolution as so amended would likewise require only a majority vote.

a question of privilege.[2] Debate thereon is under the hour rule.[3] A Member-elect has been permitted by unanimous consent to address the House during the debate on the question of whether he should be sworn in.[4]

The House has authorized its committee to take testimony in a case where the qualifications of a Member were in issue.[5] Beginning in the 94th Congress, the Committee on House Administration was granted general subpena authority in all matters within its jurisdiction. Furthermore, a committee investigating the qualifications of a Member-elect may allow his presence and permit suggestions from him during the discussion of the plan and scope of the inquiry.[6] It may also give him the opportunity to testify in his own behalf and to be present and to cross-examine witnesses.[7]

Exclusion of Adam Clayton Powell

§ 14.1 The House adopted a resolution referring to a select committee questions as to the right of a Member-elect to be sworn and to take his seat, permitting him the pay and allowances of the office pending a final determination by the House and requiring the committee to report back to the House within a prescribed time.[8] Subsequently, the House agreed to a resolution excluding him from membership on the ground, among others, that he had wrongfully diverted House funds to his own use. However, the U.S. Supreme Court ruled that a Member-elect can be excluded from the House only for a failure to meet the constitutional qualifications of age, citizenship, and inhabitancy.

On Mar. 1, 1967, the House agreed to a resolution excluding Member-elect Adam Clayton Powell, from the House, on the ground, among others, that he had wrongfully diverted House funds to his own use.[9]

2. See 3 Hinds' Precedents § 2594.

3. See 113 CONG. REC. 15, 90th Cong. 1st Sess., Jan. 10, 1967.

4. 113 CONG. REC. 15, 90th Cong. 1st Sess., Jan. 10, 1967. See also 1 Hinds' Precedents § 474.

5. 1 Hinds' Precedents § 427.

6. 1 Hinds' Precedents § 420.

7. 1 Hinds' Precedents §§ 420, 475.

8. 113 CONG. REC. 24–26, 90th Cong. 1st Sess., Jan. 10, 1967 [H. Res. 1, relating to the right of Adam Clayton Powell (N.Y.) to take his seat].

9. See H. REPT. NO. 90–27, 90th Cong. 1st Sess. (1967), "In Re Adam Clayton Powell, Report of Select Com-

On Mar. 9, 1967, Mr. Powell filed suit in the U.S. District Court, District of Columbia, asking (*inter alia*) that the Speaker and other defendants be enjoined from enforcing the resolution by which he was excluded from the House, and seeking a writ of mandamus directing the Speaker to administer him the oath of office as a Member of the 90th Congress.(10)

The action was dismissed by the district court for want of jurisdiction and by the court of appeals for lack of justiciability.(11) The Supreme Court reviewed the two lower court opinions, holding that the courts had jurisdiction, that the issue was justiciable, and that

mittee Pursuant to H. Res. 1," p. 33; see also H. Res. 278, 90th Cong. 1st Sess., 113 CONG. REC. 4997, Mar. 1, 1967. The motion for the previous question on this resolution containing the select committee recommendation was defeated (113 CONG. REC. 5020), and an amendment in the nature of a substitute excluding the Member-elect was proposed and adopted (113 CONG. REC. 5037, 5038).

10. 113 CONG. REC. 6035–42, 6048, 90th Cong. 1st Sess., Mar. 9, 1967. Mr. Powell had been requested to stand aside on the opening day of the Congress. He was not sworn in, but instead a resolution was adopted referring the question of his prima facie and his final right to a seat to a select committee [H. Res. 1, 90th Cong. 1st Sess., Jan. 10, 1967, 113 CONG. REC. 26, 27]. The House, on Mar. 1, 1967, defeated a motion for the previous question relating to the select committee resolution [H. Res. 278] which would have admitted the Member-elect as having met the constitutional qualifications of age, citizenship, and inhabitancy, but would have provided that (1) Mr. Powell be censured, (2) that he be fined $1,000 a month from his salary until $40,000 of misused funds had been paid back, and (3) that his seniority would commence as from the day he took the oath as a Member of the 90th Congress. 113 CONG. REC. 4998 et seq.

A point of order that a substitute amendment providing for the exclusion by the House of Member-elect Adam Clayton Powell would forbid the Member-elect from serving in the Senate during the 90th Congress, a power said to be beyond that of the House, and that it would forbid a later voting of the Member-elect if he were elected to fill the vacancy caused by his own exclusion, another power beyond the House, was overruled by the Chair as having been made too late in the proceedings. 113 CONG. REC. 5037, 90th Cong. 1st Sess., Mar. 1, 1967.

11. In the suit, *Powell* v *McCormack*, 266 F Supp 354 (D.C., D.C. 1967), the district court granted a motion to dismiss for want of jurisdiction. On appeal to the United States Court of Appeals for the District of Columbia, the judgment was affirmed on grounds of lack of justiciability, *Powell* v *McCormack*, 395 F2d 577 (C.A.D.C. 1968).

the power of the House under the U.S. Constitution in judging the qualifications of its Members was limited to the qualifications of age, citizenship, and inhabitancy, as set forth in article I, section 2, clause 2.[12]

On May 1, 1967, the Speaker laid before the House a letter from the Clerk advising receipt of a certificate showing the election of Mr. Powell to fill the vacancy created when the House excluded Mr. Powell from membership and declared his seat vacant. Mr. Powell did not appear to claim the seat.[13]

Effect of Felony Conviction

§ 14.2 The Speaker was authorized to administer the oath of office to a Member-elect whose right to a seat in the House was challenged on the ground that he had forfeited his rights as a citizen by reason of conviction of a felony.

On Mar. 9, 1933, at the convening of the 73d Congress, the Speaker[14] was authorized, by resolution,[15] to administer the oath of office to a Member-elect whose right to a seat in the House was questioned by a Member who asserted that the Member-elect had forfeited his rights as a citizen by reason of conviction of a felony.

Member-elect Francis H. Shoemaker, of Minnesota, was asked to stand aside during the swearing in after a resolution was offered by Mr. Albert E. Carter, of California, providing that the prima facie and final right to a seat for Mr. Shoemaker be referred to the Committee on Elections No. 1.[16]

Mr. Shoemaker had been convicted in a federal district court in Minnesota in 1930 of an offense involving the mailing of defamatory literature, and had been put on probation for five years. After a verbal altercation with the judge, he was sentenced to imprisonment for a year and a day. He served the sentence in the federal penitentiary in Leavenworth, Kansas, prior to his election to the House in 1932.[17]

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12. *Powell* v *McCormack,* 395 U.S. 486 (1969).

13. In response to a parliamentary inquiry, the Speaker indicated that if Mr. Powell appeared to take the oath and was again challenged, the House would have to determine at that time what action it should take. 113 CONG. REC. 11298, 90th Cong. 1st Sess., May 1, 1967.

14. Henry T. Rainey (Ill.).

15. 77 CONG. REC. 139, 73d Cong. 1st Sess. [H. Res. 6].

16. 77 CONG. REC. 71, 73, 73d Cong. 1st Sess.

17. *Id.* at pp. 74, 132, 133, 135.

It was alleged that under the constitution of Minnesota, Mr. Shoemaker, after the felony conviction, had become ineligible to vote or hold any office. Nevertheless, it was pointed out that he had voted in the 1932 election, had run for federal office, and that the state could not disqualify him in the latter capacity.(18)

On Mar. 10, 1933, Mr. Paul J. Kvale, of Minnesota, offered an amendment in the nature of a substitute providing that the Speaker be authorized and directed to administer the oath to Mr. Shoemaker and that the question of his final right to a seat be referred to the Committee on Elections No. 2. Debate ensued as to the responsibility of the House to bar the Member-elect at the door before giving him a hearing, as some precedents of the House suggested, or to follow other precedents and administer the oath initially and then, at a later date, consider his final right to a seat.

At the conclusion of debate the amendment was adopted on a division vote, 230 to 75.(19) The resolution as amended was agreed to, and its preamble, which referred to charges against Mr. Shoemaker, was stricken by unanimous consent.(20)

18. *Id.* at p. 74.

19. *Id.* at pp. 132–139.

20. *Id.* at p. 139.

§ 15. Suspension of Privileges

At one time, the view was expressed by a select committee that the House may impose a punishment upon a Member, when appropriate, other than censure or expulsion. The select committee in the case of Adam Clayton Powell, of New York, stated:(21)

> Although rarely exercised, the power of a House to impose upon a Member punishment other than censure but short of expulsion seems established. There is little reason to believe that the framers of the Constitution, in empowering the Houses of Congress to "punish" Members for disorderly behavior and to "expel" (art. I, sec. 5, clause 2), intended to limit punishment to censure. Among the other types of punishment for disorderly behavior mentioned in the authorities are fine and suspension.
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> In the case of Senators Tillman and McLaurin in 1902, during the 57th Congress, the Senate specifically considered the question of punishment other than expulsion or censure. The case arose on February 22, 1903, and involved a heated altercation on the floor of the Senate in which the two men came to blows. The Senate went immediately into executive session and adopted an order declaring both Senators to be in contempt of the Senate

21. H. REPT. NO. 90–27, 90th Cong. 1st Sess., 1967, "In Re Adam Clayton Powell, Report of Select Committee Pursuant to H. Res. 1," pp. 28, 29.

and referring the matter to a committee. The President pro tempore ruled that neither Senator could be recognized while in contempt and subsequently directed the clerk to omit the names of McLaurin and Tillman from a rollcall vote on a pending bill. On February 28, the committee to which the matter had been referred recommended a resolution of censure, which the Senate adopted, stating that Tillman and McLaurin are "censured for the breach of the privileges and dignity of this body, and from and after the adoption of this resolution the order adjudging them in contempt of the Senate shall be no longer in force and effect" (2 Hinds, sec. 1665). "The penalty," according to "Senate Election, Expulsion and Censure Cases" (p. 96), "thus, was censure and suspension for 6 days—which had already elapsed since the assault."

In the committee report on the Tillman-McLaurin case, three of the 10 member majority submitted their views on the issue of suspension (2 Hinds, pp. 1141–1142):

> . . . The Senate has not like power with Parliament in punishing citizens for contempt, but it has like power with Parliament in punishing Senators for contempt or for any disorderly behavior or for certain like offenses. Like Parliament, it may imprison or expel a member for offenses. "The suspension of members from the service of the House is another form of punishment." (May's Parliamentary Practice, 53.) This author gives instances of suspension in the seventeenth century and shows the frequent suspension of members under a standing order of the House of Commons, passed February 23, 1880.
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> The Senate may punish the Senators from South Carolina by fine, by reprimand, by imprisonment, by suspension by a majority vote, or by expulsion with the concurrence of two-thirds of its members.
>
> The offense is well stated in the majority report. It is not grave enough to require expulsion. A reprimand would be too slight a punishment. The Senate by a yea and-nay vote has unanimously resolved that the said Senators are in contempt. A reprimand is in effect only a more formal reiteration of that vote. It is not sufficiently severe upon consideration of the facts.
>
> A minority of four committee members, however, dissented "from so much of the report of the committee as asserts the power of the Senate to suspend a Senator and thus deprive a State- of its vote . . ." (p. 1141).

However, by its adoption of Rule XLIII clause 10[22] in the 94th Congress, relating to the voluntary abstention from voting and from participating in other legislative business by Members who have been convicted of certain crimes, the House indicated its more recent view that a Member could not be deprived involuntarily of his right to vote in the House. The constitutional impediments to such deprivation were discussed in the debate on the proposed change in the rule.[23]

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22. See House Rules and Manual § 939 (1977) .

23. 23. For discussion of the debate and adoption of the rule, see § 15.1, infra.

Grounds; Duration of Suspension

§ 15.1 In the 94th Congress, Rule XLIII was amended to provide that a Member convicted of certain crimes "should refrain from participation in the business of each committee of which he is a member and should refrain from voting on any question at a meeting of the House, or of the Committee of the Whole House.. . ." The conviction must be by a court of record and the crime must be one for which a sentence of two or more years' imprisonment may be imposed. The period of abstention continues until the Member is subsequently reelected or until juridical or executive proceedings result in the "reinstatement of the presumption of his innocence." (1)

It is clear from the debate on House Resolution 46,(2) which added clause 10, to Rule XLIII that the amendment was drafted to safeguard the reputation of the House and at the same time preserve the right to representation of the constituents of the Member's district.(3) Several of the proponents of the resolution emphasized the voluntary nature of compliance with the rule:

> MR. [JOHN J.] FLYNT [Jr., of Georgia]: . . . Let me emphasize that there is nothing mandatory or compulsory in this resolution, nor is there any specific enforcement authority. However, a Member who ignored the stated policy of the House would do so at the risk of subjecting himself to disciplinary procedures provided under House rules. . . .
>
> MR. [MELVIN] PRICE [of Illinois]: . . . Let me point out that there is nothing mandatory about the procedure recommended, but it would be expected that any Member affected would abide by the spirit of the policy. The policy could be waived by the House in specific cases if it deemed such a waiver would be in the public interest.

The reason for the voluntary nature of the Member's abstention was also made clear:

> MR. [ROBERT C.] ECKHARDT [of Texas]: Mr. Speaker, it would seem to me that to deprive a person mandatorily of his right to vote and participate on the committee would be tantamount to making him stand aside altogether in his function as a Congressman and would go to the question of his qualifications to serve. As I understand, the Powell case said that may only be for one of three reasons:

1. Rule XLIII clause 10, *House Rules and Manual* § 939 (1977).

2. H. Res. 46, 94th Cong. 1st Sess. (1975).

3. 121 CONG. REC. 10339–45, 94th Cong. 1st Sess., Apr. 16, 1975.

The question of age, the question of citizenship, and the question of residency within the State from which a man comes.

So the only way that there could be a mandatory exclusion from the exercise of the right of any Congressman to represent his district, it would seem to me, would be on a two-thirds vote on expulsion. Would the gentleman agree?

MR. FLYNT: Mr. Speaker, the gentleman from Texas is correct.

The committee felt—and I believe that the committee was unanimous—that to have attempted to make this mandatory would have been unconstitutional. It would have deprived the district, which the Member was elected to represent, of representation, as well as invoking a sanction upon the Member himself. . . .

MR. ECKHARDT: Mr. Speaker, I may say, to a certain extent practically, one may be depriving his district of representation when one tells him that he shall only participate at his peril on grounds of certain further action, which I suppose might include expulsion.

The constitutionality of depriving a Member's constituents of their representative vote troubled several Members:

MR. [DON] EDWARDS [of California]: . . . The measure before us punishes a Member of the House by attempting to deprive that person of the right to vote and participate in the legislative process. However, in our effort to so discipline a Member of Congress, we would effectively disenfranchise the nearly one-half million Americans who elected that person to represent them. Such an action undermines the basic interest of a constituency in their representative government. Any constituency has a legitimate interest in being represented by its preferred choice who possesses all the constitutional eligibility requirements, even though objected to on other grounds, such as his unwillingness to support existing laws.

A resolution such as this could put the House in the position of encouraging the loss of representation to a constituency whose representative may have committed an act of civil disobedience as a matter of conscience, perhaps even with the approval of that constituency.

The Constitution has already provided this body with the remedy of expelling a Member for misconduct. Under that clause, the expelled Member may be immediately replaced by another person to represent the constituency. However, under the provisions of the measure before us, there can be no replacement for the punished Member. By the terms of the resolution a constituency would be left without a voice in the House of Representatives for the duration of the Congress or until the disciplined Member was acquitted.

I feel that the problems raised by this measure go to the heart of our form of government. One of the most fundamental principles of this representative democracy is, in the words of Alexander Hamilton, "that the people should choose whom they please to govern them."

The argument was also advanced that the amendment exceeded the powers of the House:

MR. [ROBERT F.] DRINAN [of Massachusetts]: Mr. Speaker, on November

14, 1973, this House debated and passed a resolution nearly identical to the one now before us. It expressed the sense of this body that Members convicted of a crime punishable by more than 2 years in prison should refrain from participating in committee business and from voting on the floor.

On that occasion, I strongly opposed the resolution because, in my judgment, it exceeded the powers of the House. The Constitution is quite plain on the matter of disciplining Members. Article I, section 5, clause 2 provides:

> Each House may . . . punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

That provision marks the limits of permissible action; no other sanction against an elected Representative is allowed. The resolution we debate today intrudes into the prohibited sphere.

Under the Constitution, the House may discipline its Members only for disorderly behavior. The sanction of expulsion, while authorized, is reserved for outrageous conduct which effectively disrupts the orderly workings of the legislative process, in short, a serious violation of the Member's oath of office.

It seems to me that an elected Representative is entitled to the full privileges of the House, unless suspended or expelled. There is no middle ground. We cannot have two classes of Members: one with all the rights, and the other with only partial powers. Such bifurcation in our body is at variance with the constitutional scheme which guides our actions. Yet that is what this resolution, if passed, would accomplish.

Several other issues were raised during the debate. In response to a question concerning the omission of the effect of guilty pleas, Mr. Flynt, who had introduced the resolution, stated that a guilty plea was identical to a conviction, which was the term employed in the resolution. Similarly, Mr. Phillip Burton, of California, expressed concern as to whether an indeterminate sentence might result in House sanctions. Again, Mr. Flynt responded that it was a purpose of the Committee on Standards of Official Conduct to have these sanctions "triggered by a conviction on a count in an indictment which amounted to a felony."

Mr. Flynt further clarified several anticipated consequences of the adoption of the amendment:

> During the period of nonvoting, the Member would not be barred from attending sessions of the House or from carrying on normal representational activities, other than voting. His salary and other benefits would continue. . . .
>
> As the report points out, the committee does not intend to deprive a Member of his right to attend sessions of the House or committees or to preclude him from recording himself "present" on a yea-and-nay vote or from responding to a quorum call. A Member thus could protect his attendance record without affecting the outcome of the vote.
>
> However, I do feel that a Member affected by the rule should not be a

party to a live pair, since such a pair could affect the outcome by offsetting the vote of the individual with whom he is paired.

The House could at any time waive application of the resolution as to specific legislation or issues, thereby restoring the Member's full voting rights in such instances without violating the spirit of the rule.

§ 15.2 The House, in the 93d Congress, adopted a resolution expressing the sense of the House that Members convicted of certain crimes should refrain from participation in committee business and from voting in the House until the presumption of innocence is reinstated or until re-elected to the House.

On Nov. 14, 1973,[4] the House agreed to the following resolution:

Resolved, That it is the sense of the House of Representatives that any Member of, Delegate to, or Resident Commissioner in, the House of Representatives who has been convicted by a court of record for the commission of a crime for which a sentence of two or more years' imprisonment may be imposed should refrain from participation in the business of each committee of which he is then a member and should refrain from voting on any question at a meeting of the House, or of the Committee of the Whole House, unless or until judicial or executive proceedings result in reinstatement of the presumption of his innocence or until he is re-elected to the House after the date of such conviction. This resolution shall not affect any other authority of the House with respect to the behavior and conduct of its Members.

In its report on the resolution, the Committee on Standards of Official Conduct, stated, in part, at page 2:[5]

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4. 119 CONG. REC. 36946, 93d Cong. 1st Sess. [H. Res. 700, providing for consideration of H. Res. 128], H. REPT. NO. 93–616, Committee on Standards of Official Conduct.

Parliamentarian's Note: A similar resolution (H. Res. 933, 92d Cong.) had been reported in the preceding Congress but had not been called up by the House. That resolution had been prompted by the conviction of former Representative Dowdy for receiving a bribe, but when he voluntarily agreed not to participate in House or committee proceedings, the resolution was not called up in the House. Such resolutions are not privileged under Rule XI clause 22, as they do not recommend action by the House with respect to an individual Member.

5. H. REPT. NO. 93–616, 93d Cong. 1st Sess., Oct. 31, 1973.

Parliamentarian's Note: In the debate on the resolution the question was raised that even though it was a sense-of-the-House resolution, would it, if followed in a specific case, deprive the voters in the Member's district of a constitutional right to be fully represented? (See the remarks of Representative Robert F. Drinan [Mass.], 119 CONG. REC. 36945, 93d Cong. 1st Sess.) For an opposite point of view see, Luther Stearns

To the question of when to act, the committee adopted a policy which essentially is: where an allegation is that one has abused his direct representational or legislative position—or his "official conduct"—the committee concerns itself forthwith, because there is no other immediate avenue of remedy. But where an allegation involves a possible violation of statutory law, and the committee is assured that the charges are known to and are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course. This is not to say the committee abandons concern in statutory matters—rather, it feels it normally should not undertake duplicative investigations pending judicial resolution of such cases.

The implementation of this policy has shown, through experience, only one need for revision. For the House to withhold any action whatever until ultimate disposition of a judicial proceeding, could mean, in effect, the barring of any legislative branch action, since the appeals processes often do, or can be made to, extend over a period greater than the 2-year term of the Member.

Since Members of Congress are not subject to recall and in the absence of any other means of dealing with such cases short of reprimand, or censure, or expulsion (which would be totally inappropriate until final judicial resolution of the case), public opinion could well interpret inaction as indifference on the part of the House.

The committee recognizes a very distinguishable link in the chain of due process—that is the point at which the defendant no longer has claim to the presumption of innocence. This point is reached in a criminal prosecution upon conviction by judge or jury. It is to this condition and only to this condition that the proposed resolution reaches.

The committee reasons that the preservation of public confidence in the legislative process demands that notice be taken of situations of this type.

Cushing, *Elements of the Law and Practice of Legislative Assemblies in the United States of America,* 2d ed. (1866) § 626. Cushing conceded that during suspension, the voters would be deprived of the service of their Representative, but contended that the rights of the voters would be no more infringed by this proceeding than by an exercise of the power to imprison.

Voluntary Withdrawal

§ 15.3 Following a conviction for bribery and related offenses, a Member refrained from voting on the floor or in committee and from participating in committee business.

Parliamentarian's Note: Representative John Dowdy, of Texas, was convicted under federal statutes of bribery, perjury, and conspiracy on Dec. 31, 1971, in a federal district court in Baltimore, Maryland. On Jan. 23, 1972, the court sentenced Mr. Dowdy to 18 months in prison and a fine of $25,000.

On June 21, 1972, Mr. Dowdy filed a letter with Speaker Carl

Albert, of Oklahoma, promising to refrain from voting on the floor or in committee and from participating in committee business pending an appeal of his conviction.(6)

§ 16. Censure; Reprimand

In the House, the underlying concept governing the censure of a Member for misconduct is that of breach of the rights and privileges of the House.(7) As indicated in a report of a select committee of the House,(8) the power of each House to censure its Members "for disorderly behavior" is found in article I section 5 clause 2 of the U.S. Constitution. It is discretionary in character, and upon a resolution for censure of a Member for misconduct each individual Member considering the matter is at liberty to act on his sound discretion and vote according to the dictates of his own judgment and conscience.

The conduct for which censure may be imposed is not limited to acts relating to the Member's official duties. See *In re Chapman* (166 U.S. 661 [1897]). The committee considering censure of Senator Joseph McCarthy stated (S. Rept. No. 2508, 83d Cong., p. 22): "It seems clear that if a Senator should be guilty of reprehensible conduct unconnected with his official duties and position, but which conduct brings the Senate into disrepute, the Senate has the power to censure."

During its history, through the 94th Congress, the House of Representatives has censured 17 Members and one Delegate and has reprimanded one Member in the 94th Congress. All but one of the instances of censure occurred during the 19th century, 13 Members being censured between 1864 and 1875. The last censure in the House was imposed in 1921. In the Senate, there are four instances of censure, including the censure of Senator Joseph McCarthy in 1954.

Most cases of censure have involved the use of unparliamentary language, assaults upon a Mem-

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6. See Congressional Quarterly Weekly Report, July 8, 1972, p. 1167.

See also 6 Cannon's Precedents §§ 402, 403, wherein a select committee assumed that a Member indicted under federal law would take no part whatever in any of the business of the House or its committees until final disposition of the case was made.

7. 2 Hinds' Precedents § 1644.

8. H. REPT. NO. 90–27, 90th Cong. 1st Sess., Feb. 23, 1967, "In Re Adam Clayton Powell, Report of the Select Committee Pursuant to H. Res. 1," pp. 24–30.

ber or insults to the House by introduction of offensive resolutions,(9) but in five cases in the House and one in the Senate censure was based on corrupt acts by a Member, and in another Senate case censure was based upon noncooperation with and abuse of Senate committees.(10)

In 1873, during the 42d Congress, a special investigating committee was appointed to inquire into charges that Representatives Oakes Ames and James Brooks had been bribed in connection with the Credit Mobilier Co. and the Union Pacific Railroad.(11) Al-

9. See 2 Hinds' Precedents §§ 1246–1249, 1251, 1256, 1305, 1621, 1656; 6 Cannon's Precedents § 236.

10. See 2 Hinds' Precedents §§ 1239, 1273, 1274, 1286; 6 Cannon's Precedents § 239; "Senate Election, Expulsion and Censure Cases," S. Doc. No. 71, 87th Cong., pp. 125–27, 152–54.

In 1870, during the 41st Congress, the House censured John T. DeWeese, B. F. Whittemore, and Roderick R. Butler for the sale of appointments to the U. S. Military and Naval Academies. In Butler's case, the Member had appointed to the Military Academy a person not a resident of his district and subsequently received a political contribution from the cadet's father. Censure of DeWeese and Whittemore was voted notwithstanding that each had previously resigned. A resolution to expel Butler was defeated upon failure to obtain a two-thirds vote, whereupon a resolution of censure was voted in which the House "declare[d] its condemnation" of his conduct, which it characterized as "an unauthorized and dangerous practice" (2 Hinds' Precedents §§ 1239, 1273, 1274).

In 1929 Senator Hiram Bingham (Conn.) was censured for having placed on the Senate payroll, and used as a consultant on a pending tariff bill, one Charles L. Eyanson, who was simultaneously in the employ of the Manufacturers Association of Connecticut. The Senate adopted a resolution of censure providing that Senator Bingham's conduct regarding Eyanson "while not the result of corrupt motives on the part of the Senator from Connecticut, is contrary to good morals and senatorial ethics and tends to bring the Senate into dishonor and disrepute, and such conduct is hereby condemned." 6 Cannon's Precedents § 239.

11. The committee reported that Representative Oakes Ames "has been guilty of selling to Members of Congress shares of stock in the Credit Mobilier of America for prices much below the true value of such stock, with intent thereby to influence the votes and decisions of such Members in matters to be brought before Congress for action." With regard to Representative James Brooks, the committee found that he "did procure the Credit Mobilier Co. to issue and deliver to Charles H. Neilson, for the use and benefit of said Brooks, 50 shares of the stock of said company at a price much below its real value, well knowing that the

though the committee recommended that both Members be expelled, the House adopted substitute censure resolutions in which it "absolutely condemn[ed]" the conduct of Ames and Brooks (2 Hinds' Precedents § 1286).

Although there has been a divergence of views concerning the power of a House to expel a Member for acts committed during a preceding Congress, the right of a House to censure a Member for such prior acts is supported by clear precedent in both Houses of Congress—namely, the case of Ames and Brooks in the House of Representatives and the case of Senator McCarthy in the Senate. In Ames and Brooks the acts for which censure was voted occurred more than five years prior to censure and two congressional elections had intervened.

Thus, the broad power of the House to censure Members extends to acts occurring during a prior Congress. Whether such powers should be invoked in such circumstances is a matter committed to the discretion and judgment of the House upon consideration of the nature of the prior acts, whether they were known to the electorate at the previous election and to the prior House, and the extent to which they directly involve the authority, integrity, dignity, or reputation of the House.[12]

Censure, like other forms of discipline except expulsion, is by a majority of those voting, a quorum being present. (6 Cannon's Precedents § 236.) The House itself must order the censure. The Speaker cannot, of his own authority, censure a Member.[13]

A censure resolution may call for direct and immediate action by the House;[14] or it may recommend that a committee be appointed to investigate and report to the House.[15] A House select committee may recommend censure of a Member along with other forms of punishment in response to a resolution to investigate and recommend as to the initial and final right to a seat.[16]

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same was so issued and delivered with intent to influence the votes and decisions of said Brooks as a Member of the House."

12. H. REPT. No. 90–27, 90th Cong. 1st Sess., Feb. 23, 1967. See also § 8.4, supra.

13. 2 Hinds' Precedents §§ 1344, 1345; 6 Cannon's Precedents § 237.

14. 2 Hinds' Precedents §§ 1246–1251, 1254–1258; 6 Cannon's Precedents §§ 236, 239.

15. 2 Hinds' Precedents §§ 1649–1651, 1655 1656.

16. 113 CONG. REC. 4997, 90th Cong. 1st Sess., Mar. 1, 1967; see 113 CONG. REC. 24, 26, 27, 90th Cong. 1st Sess., Jan. 10, 1967.

Floor debate on a resolution of censure is under the hour rule.[17] The House has permitted the Member to be heard in debate as a matter of course without permission being asked or given,[18] or by unanimous consent.[19] And the Member controlling debate under the hour rule can yield time to the Member being censured. In one instance, after a Member had explained, the House reconsidered its vote of censure and reversed it.[20] In some situations where Members have apologized following the initiation of censure proceedings, the House has accepted the apology and terminated the proceedings.[21]

After the House has ordered censure, it is normally administered by the Speaker to the Member at the bar of the House.[22]

The House has on occasion made a distinction between censure and reprimand, the latter being a somewhat lesser punitive measure than censure. A censure is administered by the Speaker to the Member at the bar of the House, whereas a reprimand is administered to the Member "standing in his place"[23] or merely by way of the adoption of a committee report. Thus in 1976,[24] the House administered a reprimand to Mr. Robert L. F. Sikes, of Florida, by adopting by a vote of 381 yeas to 3 nays a resolution (H. Res. 1421) which provided that the House adopt the report of the Committee on Standards of Official Conduct on the investigation of a complaint against Mr. Sikes. The Speaker administered no oral reprimand. The report[1] declared that (a) failure of Mr. Sikes to report certain stockholdngs as required by House Rule XLIV was deserving of a reprimand, and (b) that the investment by him in the stock of a bank at a naval base in Florida and activities in promoting its establishment was deserving of a reprimand. The report provided that in each instance, "the adoption of this report by the House shall constitute such reprimand."[2]

17. See 5 Hinds' Precedents § 4990.

18. 2 Hinds' Precedents §§ 1246, 1253.

19. 2 Hinds' Precedents § 1656.

20. 2 Hinds' Precedents § 1653.

21. See, for instance, 2 Hinds' Precedents §§ 1250, 1257, 1258, 1652; 6 Cannon's Precedents § 7006.

22. See 2 Hinds' Precedents §§ 1251, 1259; 6 Cannon's Precedents § 236.

23. Luther Sterns Cushing, Elements of the Law and Practice of Legislative Assemblies in the United States of America, 2d ed. (1866), § 682.

24. CONG. REC. (daily ed.), 94th Cong. 2d Sess., July 29, 1976.

1. H. REPT. NO. 94–1364, 94th Cong. 2d Sess., July 23. 1976.

2. *Id.* at p. 4.

Censure of Adam Clayton Powell

§ 16.1 A House select committee recommended censure, along with other penalties, against a Member-elect.

On Mar. 1, 1967,[3] the House considered a resolution censuring Adam Clayton Powell, of New York, for, INTER ALIA, ignoring the processes and authority of the New York state courts and for improper use of government funds. The resolution provided:

> Whereas,
>
> The Select Committee appointed pursuant to H. Res. 1 (90th Congress) has reached the following conclusions:
>
> First, Adam Clayton Powell possesses the requisite qualifications of age, citizenship and inhabitancy for membership in the House of Representatives and holds a Certificate of Election from the State of New York.
>
> Second, Adam Clayton Powell has repeatedly ignored the processes and authority of the courts in the State of New York in legal proceedings pending therein to which he is a party, and his contumacious conduct towards the court of that State has caused him on several occasions to be adjudicated in contempt thereof, thereby reflecting discredit upon and bringing into disrepute the House of Representatives and its Members.
>
> Third, as a Member of this House, Adam Clayton Powell improperly maintained on his clerk-hire payroll Y. Marjorie Flores (Mrs. Adam C. Powell) from August 14, 1964, to December 31, 1966, during which period either she performed no official duties whatever or such duties were not performed in Washington, D. C. or the State of New York as required by law.
>
> Fourth, as Chairman of the Committee on Education and Labor, Adam Clayton Powell permitted and participated in improper expenditures of government funds for private purposes.
>
> Fifth, the refusal of Adam Clayton Powell to cooperate with the Select Committee and the Special Subcommittee on Contracts of the House Administration Committee in their lawful inquiries authorized by the House of Representatives was contemptuous and was conduct unworthy of a Member; Now, therefore be it
>
> *Resolved*,
>
> 1. That the Speaker administer the oath of office to the said Adam Clayton Powell, Member-elect from the Eighteenth District of the State of New York.
>
> 2. That upon taking the oath as a Member of the 90th Congress the said Adam Clayton Powell be brought to the bar of the House in the custody of the Sergeant-at-Arms of the House and be there publicly censured by the Speaker in the name of the House.
>
> 3. That Adam Clayton Powell, as punishment, pay to the Clerk of the House to be disposed of by him according to law, Forty Thousand Dollars ($40,000.00). The Sergeant-at Arms of the House is directed to deduct One Thousand Dollars ($1,000.00) per month from the salary otherwise due the said Adam Clayton Powell and pay

3. H. Res. 278, 113 CONG. REC. 4997, 90th Cong. 1st Sess.

the same to said Clerk, said deductions to continue while any salary is due the said Adam Clayton Powell as a Member of the House of Representatives until said Forty Thousand Dollars ($40,000.00) is fully paid. Said sums received by the Clerk shall offset to the extent thereof any liability of the said Adam Clayton Powell to the United States of America with respect to the matters referred to in the above paragraphs Third and Fourth of the preamble to this Resolution.

4. That the seniority of the said Adam Clayton Powell in the House of Representatives commence as of the date he takes the oath as a Member of the 90th Congress.

5. That if the said Adam Clayton Powell does not present himself to take the oath of office on or before March 13, 1967, the seat of the Eighteenth District of the State of New York shall be deemed vacant and the Speaker shall notify the Governor of the State of New York of the existing vacancy.

The House voted down the motion for the previous question on the resolution and substituted an amendment to exclude, which was adopted.(4)

Censure of Joseph R. McCarthy

§ 16.2 The Senate, by resolution reported by a select committee, censured a Senator for his noncooperation with and abuse of certain Senate committees during an investigation of his conduct as a Senator.

In 1951, during the 82d Congress, a resolution had been introduced calling for an investigation to determine whether expulsion proceedings should be instituted against Senator Joseph McCarthy, of Wisconsin, by reason, *inter alia*, of his activities in the 1950 Maryland senatorial election; the resolution was referred to the Subcommittee on Privileges and Elections, whose Chairman was Senator Guy M. Gillette, of Iowa. Senator McCarthy rejected invitations to attend the hearings of the Gillette subcommittee, termed the charges against him a Communist smear, and stated that the hearings were designed to expel him "for having exposed Communists in Government." In 1954, during the succeeding 83d Congress, a censure resolution against Senator McCarthy was introduced and referred to a select committee headed by Senator Arthur V. Watkins, of Utah. The Watkins committee recommended censure in part on the ground that Senator McCarthy's conduct toward the Gillette subcommittee, its members and the Senate "was contemptuous, contumacious, and denunciatory, without reason, or justification, and was obstructive to

4. 113 CONG. REC. 5020, 5037, 90th Cong. 1st Sess., Mar. 1, 1967. See also § 14.1, supra.

legislative processes."[5] After debate, the Senate adopted a resolution (S. Res. 301, as amended) censuring Senator McCarthy on two counts:

> *Resolved*, That the Senator from Wisconsin, Mr. McCarthy, failed to cooperate with the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration in clearing up matters referred to that subcommittee which concerned his conduct as a Senator and affected the honor of the Senate and, instead, repeatedly abused the subcommittee and its members who were trying to carry out assigned duties, thereby obstructing the constitutional processes of the Senate, and that this conduct of the Senator from Wisconsin, Mr. McCarthy, is contrary to senatorial traditions and is hereby condemned.
>
> Sec. 2. The Senator from Wisconsin, Mr. McCarthy, in writing to the chairman of the Select Committee To Study Censure Charges (Mr. Watkins) after the select committee had issued its report and before the report was presented to the Senate charging three members of the select committee with "deliberate deception" and "fraud" for failure to disqualify themselves; in stating to the press on November 4, 1954, that the special Senate session that was to begin November 8, 1954, was a "lynch party"; in repeatedly describing this special Senate session as a "lynch bee" in a nationwide television and radio show on November 7, 1954; in stating to the public press on November 13, 1954, that the chairman of the select committee (Mr. Watkins) was guilty of "the most unusual, most cowardly thing I've heard of" and stating further: "I expected he would be afraid to answer the questions, but didn't think he'd be stupid enough to make a public statement"; and in characterizing the said committee as the "unwitting handmaiden," "involuntary agent," and "attorneys in fact" of the Communist Party and in charging that the said committee in writing its report "imitated Communist methods—that it distorted, misrepresented, and omitted in its effort to manufacture a plausible rationalization" in support of its recommendations to the Senate, which characterizations and charges were contained in a statement released to the press and inserted in the Congressional Record of November 10, 1954, acted contrary to senatorial ethics and tended to bring the Senate into dishonor and disrepute, to obstruct the constitutional processes of the Senate, and to impair its dignity; and such conduct is hereby condemned.

As noted above, one of the counts on which censure was voted in 1954 concerned his conduct toward the Gillette subcommittee in 1952 during the preceding Congress. The report of the select committee discussed at length the contention by Senator McCarthy that since he was reelected in 1952, the committee lacked power to consider, as a basis for censure, any conduct on his part occurring prior to Jan. 3, 1953, when he took his seat for a

5. 100 CONG. REC. 16392, 83d Cong. 2d Sess., Dec. 2, 1954 [S. Res. 301, amended], S. REPT. No. 83–2508.

new term (S. REPT. NO. 2508, 83d Cong., pp. 20–23, 30, 31). The committee stated (p. 22):

> While it may be the law that one who is not a Member of the Senate may not be punished for contempt of the Senate at a preceding session, this is no basis for declaring that the Senate may not censure one of its own Members for conduct antedating that session, and no controlling authority or precedent has been cited for such position.
>
> The particular charges against Senator McCarthy, which are the basis of this category, involve his conduct toward an official committee and official committee members of the Senate.
>
> The reelection of Senator McCarthy in 1952 was considered by the select committee as a fact bearing on this proposition. This reelection is not deemed controlling because only the Senate itself can pass judgment upon conduct which is injurious to its processes, dignity, and official committees.

Elaborating on its view that only the Senate can pass judgment upon conduct adverse to its processes and committees, the select committee added (pp. 30–31):

> Nor do we believe that the reelection of Senator McCarthy by the people of Wisconsin in the fall of 1952 pardons his conduct toward the Subcommittee on Privileges and Elections. The charge is that Senator McCarthy was guilty of contempt of the Senate or a senatorial committee. Necessarily, this is a matter for the Senate and the Senate alone. The people of Wisconsin can only pass upon issues before them; they cannot forgive an attack by a Senator upon the integrity of the Senate's processes and its committees. That is the business of the Senate.

Censure of Thomas J. Dodd

§ 16.3 The Senate, by resolution reported by its Select Committee on Standards and Conduct, censured a Senator for exercising the power and influence of his office to obtain and use for his personal benefit funds from the public raised through political testimonials and a political campaign.

The Senate, by resolution reported by its Select Committee on Standards and Conduct,[6] censured Senator Thomas J. Dodd, of Connecticut, for exercising the power and influence of his office to obtain and use for his personal benefit funds from the public raised through political testimonials and campaigns.

The committee conducted hearings from June, 1966 through March, 1967 on allegations that the Senator had misused campaign funds for personal purposes.[7] From its investigations the committee concluded in its re-

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6. 113 CONG. REC. 17073, 90th Cong. 1st Sess., June 23, 1967 [S. Res. 112], S. REPT. NO. 90–193.

7. S. REPT. NO. 90–193, p. 9.

port that seven fund-raising events were held for the Senator for the period 1961 through 1965, and that the receipts from these totaled some $203,983. All but one of the events was represented as being held for political campaign purposes, either to raise funds for the Senator's 1964 campaign or to pay off debts from his 1958 and 1964 campaigns for a seat in the Senate.[8] The report stated:

> From the circumstances of all the fund-raising events, including the exclusive control of the funds by members of Senator Dodd's staff, the extensive participation by members of Senator Dodd's staff, the close political relationship between Senator Dodd and the sponsors of the fund-raising events, the preoccupation of the organizers with Senator Dodd's apparently political indebtedness, and the partisan political nature of the printed programs, Senator Dodd's knowledge of the political character of these events must be presumed.[9]

In addition to the $203,983, Senator Dodd and the political committees supporting his re-election to the Senate in 1964 received campaign contributions of at least $246,290. The expenditure of these funds was summarized by the committee, as follows:[10]

> From the proceeds of the seven fund-raising events from 1961 through 1965 and the contributions to the 1964 political campaign, Senator Dodd or his representatives received funds totaling at least $450,273. From these funds, Senator Dodd authorized the payment of at least $116,083 for his personal purposes. The payments included Federal income tax, improvements to his Connecticut home, club expenses, transfers to a member of his family, and certain other transportation, hotel, restaurant and other expenses incurred by Senator Dodd outside of Connecticut or by members of his family or his representatives outside of the political campaign period. Senator Dodd further authorized the payment of an additional amount of at least $45,233 from these proceeds for purposes which are neither clearly personal nor political. These payments were for repayment of his loans in the sum of $41,500 classified by Senator Dodd as "political-personal" and $3,733 for bills for food and beverages.

In addition, after the 1964 campaign, Senator Dodd received a campaign contribution of $8,000 from the International Latex Corp., and, for a period of 21 months, he accepted as gifts the loans of three automobiles in succession from a constituent and used them for personal transportation.[11]

8. *Id.* at p. 24

9. *Id.* at p. 24.

10. *Id.* at p. 25.

11. On seven trips from 1961 through 1965, Senator Dodd requested and accepted reimbursement from both the Senate and private organizations for the same travel. *Id.* at p. 25. This was a charge which the committee included in its censure resolution,

The committee found Senator Dodd's conduct censurable, as follows:[12]

> Senator Dodd exercised the influence and power of his office as a United States Senator to directly or indirectly obtain funds from the public through testimonials which were political in character, over a period of five years from 1961 to 1965. The notices of these fund-raising events received by the public either stated that the funds were for campaign expenses or deficits or failed to state for what purposes the funds were to be used. Not one solicitation letter, invitation, ticket, program, or other written communication informed the public that the funds were to be used for personal purposes. Senator Dodd used part of the proceeds from these political testimonials and part of the contributions from his political campaign of 1964 for his personal benefit. These acts, together with his requesting and accepting reimbursements from 1961 through 1965 for expenses from both the Senate and private organizations for the same travel, comprise a course of conduct which deserves the censure of the Senate, is contrary to accepted morals, derogates from the public trust expected of a Senator, and tends to bring the Senate into dishonor and disrepute

The committee reported a resolution of censure, as follows:

> *Resolved,* That it is the judgment of the Senate that the Senator from Connecticut, Thomas J. Dodd, for having engaged in a course of conduct over a period of five years from 1961 to 1965 of exercising the influence and power of his office as a United States Senator, as shown by the conclusions in the investigation by the Select Committee on Standards and Conduct
>
> (a) to obtain and use for his personal benefit, funds from the public through political testimonials and a political campaign, and
>
> (b) to request and accept reimbursements for expenses from both the Senate and private organizations for the same travel[13] deserved the censure of the Senate; and he is so censured for his conduct, which is contrary to accepted morals, derogates from the public trust expected of a Senator, and tends to bring the Senate into dishonor and disrepute.[14]

Debate on the resolution[15] began on June 13, 1967.[16] Senator John Stennis, of Mississippi, chairman of the committee, stated to the Senate that the censure resolution was not bottomed upon any one specific action or violation, nor on one expenditure or a few expenditures and not on one matter which could have been an error. He said:

> . . . It is based on the fact that the practice happened over and over and

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but which was deleted by an amendment offered by Senator Allen J. Ellender (La.). See 113 CONG. REC. 17020, 90th Cong. 1st Sess., June 23, 1967.

12. S. REPT. NO. 90–193, p. 25.

13. See footnote 11, supra.

14. S. Res. 112, 90th Cong. 1st Sess.

15. The resolution, S. Res. 112, was introduced Apr. 27, 1967; see 113 CONG. REC. 10977.

16. 113 CONG. REC. 15663, 90th Cong. 1st Sess.

over again, so much so, and over a long period of time, as to become a pattern of operation.

The words used in the charge itself are "course of conduct." It amounted to a course of conduct that was wrong on its face, and therefore brought the Senate into disrepute.(17)

On June 22, Senator John Tower, of Texas, offered an amendment to delete "censure" and substitute therefor "reprimand." He declared that:(18)

> This proposal would give us the opportunity to express our displeasure, our disapproval, and our disassociation, but at the same time avoid the severity of censure . . . inasmuch as there is no precedent for censure on the basis of means of raising funds for private political use, in the absence of an existing rule or code on the subject.

The amendment was defeated, 9 to 87.(19)

After debate, which continued until June 23, 1967, the Senate adopted the resolution, by a vote of yeas 92, nays 5, after first striking the second charge relating to double-billing for several trips.(20)

§ 17. Imposition of Fine

A fine may be levied by the House against a Member pursuant to its constitutional authority to punish its Members (Art. I, § 5, clause 2).(1)

Fine of Member For Acts Committed in Prior Congress

§ 17.1 The House agreed to a resolution providing for the imposition of a fine against a Member-elect charged with misuse of appropriated funds in a prior Congress.

In 1967, the recommendation of a House committee that Member-elect Adam Clayton Powell, of New York, be fined was considered and rejected in favor of a resolution that he be excluded.(2) Two

17. *Id.* at p. 15664.

18. *Id.* at p. 16979.

19. *Id.* at p. 16986.

20. *Id.* at p. 17020.

1. See H. REPT. NO. 90–27, 90th Cong. 1st Sess. (1967), "In Re Adam Clayton Powell, Report of Select Committee Pursuant to H. Res. 1," pp. 28, 29.

See also, 2 Hinds' Precedents 1665, p. 1142, for the Senate censure case of McLaurin and Tillman, both Senators from South Carolina, 57th Cong.; see also remarks of Senator Mills (Tex.) in debate on charges against Senator Roach (N.D.), 25 CONG. REC. 162, 53d Cong. 1st Sess., Apr. 15, 1893.

2. See H. REPT. NO. 90–27, 90th Cong. 1st Sess. (1967), "In Re Adam Clayton Powell, Report of Select Committee Pursuant to H. Res. 1," p. 33. The committee recommended that "(3) Adam Clayton Powell, as pun-

years later, however, on Jan. 3, 1969,(3) the House agreed to a resolution which included a provision for a fine of $25,000 to be deducted on a monthly basis from Mr. Powell's salary.

ishment (for improper expenditure of House funds for private purposes, and for maintaining a person on his clerk-hire payroll who performed no official duties whatever or did not perform them in Washington, D.C., or in the Member's district), pay the Clerk of the House, to be disposed of by him according to law, $40,000; that the Sergeant at Arms of the House be directed to deduct $1,000 per month from the salary otherwise due Mr. Powell and pay the same to the Clerk, said deductions to continue until said sum of $40,000 is fully paid; and that said sums received by the Clerk shall offset any civil liability of Mr. Powell to the United States of America with respect to the matters referred to in paragraphs second and third above (matter in parentheses)."

See also H. Res. 278, 90th Cong. 1st Sess. The motion for the previous question on this resolution containing the select committee recommendation was defeated (113 CONG. REC. 5020, Mar. 1, 1967), and a substitute amendment excluding the Member-elect was proposed and adopted (113 CONG. REC. 5037, 5038, Mar. 1, 1967). See also § 14.1, supra.

3. 115 CONG. REC. 29, 34, 91st Cong. 1st Sess., Jan. 3, 1969 [H. Res. 2]. After having been excluded from the 90th Congress (see 14, supra), Mr. Powell won re-election to the 91st Congress, but was required to pay a fine for improper expenditures made prior to the 90th Congress.

§ 18. Deprivation of Seniority Status

Under the U.S. Constitution, the House is authorized to deprive a Member of his seniority status as a form of disciplinary action.(4)

Procedure

§ 18.1 A Member may be reduced in committee seniority as a result of party discipline enforced through the machinery of his party—the caucus and the Committee on Committees.

Parliamentarian's Note: In 1965, two Democratic Members who had refused to support the Presidential candidate of their party were reduced in committee seniority as the result of party discipline enforced through the machinery of the party-the caucus and the Committee on Committees.(5)

4. See § 18.2, infra.

5. One Member (Albert Watson [S.C.]) resigned from the House, 111 CONG. REC. 805, 806, 89th Cong. 1st Sess., Jan. 15, 1965, and was then re-elect-

As a matter of party disciplinary policy, the Democratic Caucus instructed the Committee on Committees to assign the "last position" on a committee to a particular Member. But other Members subsequently elected to the same committee were junior to him in committee seniority.(6)

In 1967, the Democratic Committee on Committees reported to the House a resolution leaving vacancies on certain standing committees pending further consideration by the caucus of committee assignments and seniority thereon of a Member who had, in the preceding Congress, been stripped of his committee seniority (at the direction of the caucus) and assigned to the last position on the committees, and who had asked that he not be assigned to any committee pending a final determination by the caucus.(7)

ed as a member of the other political party in a special election called to fill the vacancy. The other (John B. Williams [Miss.]) was voted to the bottom of two committees, 111 CONG. REC. 809, 89th Cong. 1st Sess., Jan. 15, 1965.

6. See 112 CONG. REC. 27486, 89th Cong. 2d Sess., Oct. 18, 1966, wherein committee member John Bell Williams (Miss.) was advised that a newly elected Member would rank below Mr. Williams in seniority.

7. 113 CONG. REC. 1086, 90th Cong. 1st Sess., Jan. 23, 1967, relating to the assignment of committee positions of John Bell Williams (Miss.).

Deprivation of Seniority Status For Acts Committed in Prior Congress

§ 18.2 Deprivation of seniority status is a form of disciplinary action that may be invoked by the House against a Member, pursuant to a committee's recommendation, under article I, section 5, clause 2 of the U.S. Constitution, for acts committed in a prior Congress.

In the 90th Congress, a committee of the House recommended that a Member-elect, Adam Clayton Powell, of New York, be deprived of his seniority status and subjected to certain other penalties for his conduct in a prior Congress.(8)

8. See H. REPT. NO. 90–27, 90th Cong. 1st Sess. (1967), "In Re Adam Clayton Powell, Report of Select Committee Pursuant to H. Res. 1," p. 33; see also H. Res. 278, 90th Cong. 1st Sess., 113 CONG. REC. 4997, Mar. 1, 1967. The motion for the previous question on this resolution containing the select committee recommendation was defeated (113 CONG. REC. 5020, Mar. 1, 1967), and a substitute amendment excluding the Member-elect was proposed and adopted (113 CONG. REC. 5037, 5038, Mar. 1, 1967). See § 14.1, supra.

The recommendation of the select committee was characterized by a

In the 91st Congress, the House agreed to a resolution which, among other things, reduced the seniority of Mr. Powell to that of first-term Congressman (thus eliminating consideration of any prior service in the computation of seniority).(9)

Member: "Never before has any Member of the Congress been stripped of his seniority in the course of (punishment) proceedings." 113 CONG. REC. 5006, Mar. 1, 1967, remarks by Representative John Conyers, Jr. (Mich.).

9. 9. 115 CONG. REC. 29, 34, 91st Cong. 1st Sess., Jan. 3, 1969 [H. Res. 2]. r. Powell had been excluded by the House in the 90th Congress, but had been reelected to the 91st Congress. The resolution [H. Res. 2] also provided for a fine of $25,000 against Mr. Powell to be deducted on a monthly basis from his salary, and specified that Mr. Powell had to take the oath before Jan. 15, 1969, or his seat would be declared vacant.

APPENDIX

Opinions of the Committee on Standards of Official Conduct

Subject:	*Advisory Opinion No.*
Communications with Federal agencies	1
Clerk-hire allowance	2
Travel at expense of foreign governments	3
Acceptance of nonpaid transportation	4

ADVISORY OPINION NO. 1

(Issued January 26, 1970)

ON THE ROLE OF A MEMBER OF THE HOUSE OF REPRESENTATIVES IN COMMUNICATING WITH EXECUTIVE AND INDEPENDENT FEDERAL AGENCIES

Reason for Issuance.—A number of requests have come to the Committee for its advice in connection with actions a Member of Congress may properly take in discharging his representative function with respect to communications on constituent matters. This advisory opinion is written to provide some guidelines in this area in the hope they will be of assistance to Members.

Background.—The first Article in our Bill of Rights provides that "Congress shall make no law . . . abridging the . . . right of the people . . . to petition the Government for a redress of grievances." The exercise of this Right involves not only petition by groups of citizens with common objectives, but increasingly by individuals with problems or complaints involving their personal relationships with the Federal Government. As the population has grown and as the Government has enlarged in scope and complexity, an increasing number of citizens find it more difficult to obtain redress by direct communication with administrative agencies. As a result. the individual turns increasingly to his most proximate connection with his Government, his Representative in the Congress, as evidenced by the fact that congressional offices devote more time to constituent requests than to any other single duty.

The reasons individuals sometimes fail to find satisfaction from their petitions are varied. At the extremes, some grievances are simply imaginary rather than real, and some with merit are denied for lack of thorough administrative consideration.

Sheer numbers impose requirements to standardize responses. Even if mechanical systems function properly and timely, the stereotyped responses they produce suggest indifference. At best, responses to grievances in form letters or by other automated means leave much to be desired.

Another factor which may lead to petitioner dissatisfaction is the occasional failure of legislative language, or the administrative interpretation of it, to cover adequately all the merits the legislation intended. Specific cases arising under these conditions test the legislation and

provide a valuable oversight disclosure to the Congress.

Further, because of the complexity of our vast Federal structure, often a citizen simply does not know the appropriate office to petition.

For these, or similar reasons, it is logical and proper that the petitioner seek the assistance of his Congressman for an early and equitable resolution of his problem.

Representations.—This Committee is of the opinion that a Member of the House of Representatives, either on his own initiative or at the request of a petitioner, may properly communicate with an Executive or Independent Agency on any matter to:

—request information or a status report;

—urge prompt consideration;

—arrange for interviews or appointments;

—express judgment;

—call for reconsideration of an administrative response which he believes is not supported by established law, Federal regulation or legislative intent;

—perform any other service of a similar nature in this area compatible with the criteria hereinafter expressed in this Advisory Opinion.

Principles To Be Observed.—The overall public interest, naturally, is primary to any individual matter and should be so considered. There are also other self-evident standards of official conduct which Members should uphold with regard to these communications. The Committee believes the following to be basic:

1. A Member's responsibility in this area is to all his constituents equally and should be pursued with diligence irrespective of political or other considerations.

2. Direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is unwarranted abuse of the representative role.

3. A Member should make every effort to assure that representations made in his name by any staff employee conform to his instruction.

Clear Limitations.—Attention is invited to United States Code, Title 18, Sec. 203(a) which states in part: "Whoever . . . directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another

(1) at a time when he is a Member of Congress . . .; or

(2) at a time when he is an officer or employee of the United States in the . . . legislative . . . branch of the government . . .

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission . . .

Shall be fined not more than $10,000 or imprisoned for not more than two years or both; and shall be incapable of holding any office of honor, trust, or profit under the United States."

The Committee emphasizes that it is not herein interpreting this statute but notes that the law does refer to *any compensation, directly or indirectly, for services by himself or another.* In this connec-

tion, the Committee suggests the need for caution to prevent the accrual to a Member of any compensation for any such services which may be performed by a law firm in which the Member retains a residual interest.

It should be noted that the above statute applies to officers and employees of the House of Representatives as well as to Members.

ADVISORY OPINION NO. 2

(Issued July 11, 1973)

ON THE SUBJECT OF A MEMBER'S CLERK HIRE

Reason for issuance.—A number of requests have come to the Committee for advice on specific situations which, to some degree, involve consideration of whether moneys appropriated for Members' clerk hire are being properly utilized.

A summary of the responses to these requests forms the basis for this Advisory Opinion which, it is hoped, will provide some guidelines and assistance to all Members.

Background.—The Committee requested the Congressional Research Service to examine in depth the full scope of the laws and the legislative history surrounding Members' clerk hire. The search produced little in the way of specific parameters in either case law or congressional intent, concluding that ". . . no definitive definition was found . . .". It is out of this absence of other guidance the Committee feels constrained to express its views.

Clerk hire allowance for Representatives was initiated in 1893 (27 Stat. 757). The law providing it spoke of providing clerical assistance to a Representative "in the discharge of his official and representative duties . . .". The same phraseology is used today in each Legislative Appropriations bill and by the Clerk of the House in his testimony before the Subcommittee on Legislative Appropriations. An exact definition of "official and representative duties" was not found in the extensive materials researched. Remarks concerning various bills, however, usually refer to "clerical service" or terms of similar import, thus implying a consistent perception of the term as payment for personal services.

Summary Opinion.—This Committee is of the opinion that the funds appropriated for Members' clerk hire should result only in payment for personal services of individuals, in accordance with the law relating to the employment of relatives, employed on a regular basis, in places as provided by law, for the purpose of performing the duties a Member requires in carrying out his representational functions.

The Committee emphasizes that this opinion in no way seeks to encourage the establishment of uniform job descriptions or imposition of any rigid work standards on a Member's clerical staff. It does suggest, however, that it is improper to levy, as a condition of employment, any responsibility on any clerk to incur personal expenditures for the primary benefit of the Member or of the Member's congressional office operations, such as subscriptions to publications, or purchase of services, goods or products intended for other than the clerk's own personal use.

The opinion clearly would prohibit any Member from retaining any person from his clerk hire allowance under either an express or tacit agreement that the sal-

ary to be paid him is in lieu of any present or future indebtedness of the Member, any portion of which may be allocable to goods, products, printing costs, campaign obligations, or any other non-representational service.

In a related regard, the Committee feels a statement it made earlier, in responding to a complaint, may be of interest. It states: "As to the allegation regarding campaign activity by an individual on the clerk hire rolls of the House, it should be noted that, due to the irregular time frames in which the Congress operates, it is unrealistic to impose conventional work hours and rules on congressional employees. At some times, these employees may work more than double the usual workweek—at others, some less. Thus employees are expected to fulfill the clerical work the Member requires during the hours he requires and generally are free at other periods. If, during the periods he is free, he voluntarily engages in campaign activity, there is no bar to this. There will, of course, be differing views as to whether the spirit of this principle is violated, but this Committee expects Members of the House to abide by the general proposition."

ADVISORY OPINION NO. 3

(Issued June 26, 1974)

ON THE SUBJECT OF FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE HOUSE OF REPRESENTATIVES AT THE EXPENSE OF FOREIGN GOVERNMENTS

Reason for Issuance.—The Committee has received a number of requests from Members and employees of the House for guidance and advice regarding acceptance of trips to foreign countries, the expenses of which are borne by the host country or some agent or instrumentality of it.

The Committee is advised that similar inquiries recently have been put to the Department of State with respect to other Federal employees.

In order to provide widest possible dissemination to views expressed in response to the requests, and to coordinate with statements likely to be forthcoming from other areas of the Federal government in this regard, this general advisory opinion is respectfully offered.

Background.—The United States Constitution, at Article I, Section 9, Clause 8, holds that:

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

This provision, described as stemming from a "just jealousy of foreign influence of every sort," is extremely broad as to whom it covers, as well as to the "presents" or "emoluments" it prohibits—speaking of the latter as *of any kind whatever*. (emphasis provided)

It is narrow only in the sense that the framers, aware that social or diplomatic protocols could compel some less than absolute observance of a prohibition on the receipt or exchange of gifts, provided for specific exceptions with "the consent of the Congress."

Congress dealt from time to time with these exceptions through public and private bills addressed to specific situations, and dealt generally, commencing in 1881,

with the overall question of management of foreign gifts.

In 1966 Congress passed the latest and the existing Public Law 89–673, "an Act to grant the consent of Congress to the acceptance of certain gifts and decorations from foreign governments." That law is presently codified at Title 5, United States Code, Section 7342, a copy of which is attached.

The law is quite explicit in virtually all particulars, save whether the expense of a trip paid for by a foreign government is a ". . . present or thing, other than a decoration, tendered by or received from a foreign government; . . ."

It is on this point that this Opinion lies.

Basis of Authority for Opinion.—Since this matter impinges equally on all Federal employees, the Committee sought advice from the Comptroller General as legal adviser to the Congress, and from the Secretary of State as the implementing authority over 5 U.S.C. 7342.

Copies of their official responses are attached to this Opinion.

Summary Opinion.—It is the opinion of this Committee, on its own initiative and with the advice of the Comptroller General and the Assistant Secretary of State, that acceptance of travel or living expenses in specie or in kind by a Member or employee of the House of Representatives from any foreign government, official agent or representative thereof is not consented to in 5 U.S.C. 7342, and is, therefore, prohibited. This prohibition applies also to the family and household of Members and employees of the House of Representatives.

§ 7342. Receipt and disposition of foreign gifts and decorations

(a) For the purpose of this section—

(1) "employee" means—

(A) an employee as defined by section 2105 of this title;

(B) an individual employed by, or occupying an office or position in, the government of a territory or possession of the United States or of the District of Columbia;

(C) a member of a uniformed service;

(D) the President;

(E) a Member of Congress as defined by section 2106 of this title; and

(F) a member of the family and household of an individual described in subparagraphs (A)–(E) of this paragraph;

(2) "foreign government" means a foreign government and an official agent, or representative thereof;

(3) "gift" means a present or thing, other than a decoration, tendered by or received from a foreign government; and

(4) "decoration" means an order, device, medal, badge, insignia, or emblem tendered by or received from a foreign government.

(b) An employee may not request or otherwise encourage the tender of a gift or decoration.

(c) Congress consents to—

(1) the accepting and retaining by an employee of a gift of minimal value tendered or received as a souvenir or mark of courtesy; and

(2) the accepting by an employee of a gift of more than minimal value when it appears that to refuse the gift would be likely to cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States. However, a gift of more than minimal value is deemed to have been accepted on

behalf of the United States and shall be deposited by the donee for use and disposal as the property of the United States under regulations prescribed under this section.

(d) Congress consents to the accepting, retaining, and wearing by an employee of a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the agency, office or other entity in which the employee is employed and the concurrence of the Secretary of State. Without this approval and concurrence, the decoration shall be deposited by the donee for use and disposal as the property of the United States under regulations prescribed under this section.

(e) The President may prescribe regulations to carry out the purpose of this section. Added Pub. L. 90–83 § 1(45)(C), Sept. 11, 1967, 81 Stat. 208.

DEPARTMENT OF STATE,
Washington, D.C., May 9, 1974.

Hon. MELVIN PRICE,
Chairman, Committee on Standards of Official Conduct, House of Representatives.

DEAR MR. CHAIRMAN: I am replying to your letter of April 17 to Mr. Hampton Davis, of the Office of the Chief of Protocol, requesting comment on Congressman Kemp's suggestion that your Committee issue a briefing paper on the propriety of acceptance by Congressional Members and staff of trips offered them at the expense of foreign governments.

Various Federal agencies have put similar questions to the Department of State on a number of occasions in behalf of their employees who have received but not yet acted on offers of such trips. It has been the Department's consistent position that the offer of an expenses-paid trip is an offer of a gift and that, therefore, if tendered by a foreign government or any representative thereof to a Federal employee, the Foreign Gifts and Decorations Act of 1966 would require its refusal. A trip cannot qualify under the special provision permitting acceptance of a gift of more than minimal value on the ground that to refuse it would appear likely to "cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States". This follows from the requirement that the donee, being deemed to have accepted such a gift on behalf of the United States, deposit it for use and disposal as property of the United States in accordance with the implementing regulations, since the recipient of a trip could not fulfill that requirement.

Precisely because of the impossibility of surrendering the gift of a trip once it has been accepted and taken, we believe it would be highly advisable for your Committee to issue the briefing paper on the subject which Congressman Kemp has suggested. In this connection the Committee may be interested to know that the Department is planning a new informational program designed to improve understanding and compliance with the Foreign Gifts and Decorations Act and the implementing regulations. The program will be aimed not only at those within the Federal establishment who might become donees or who may have responsibility for briefing potential donees, but also at the foreign governments that appear to be less than fully aware of the stringent legal restrictions

that we operate under in this area. We shall be happy to see that the Committee is included in the distribution of the material being developed.

I hope that we have been helpful in this matter and that you will feel free to call upon us at any time you think we can be of assistance.

Sincerely yours,

LINWOOD HOLTON,
Assistant Secretary for Congressional Relations.

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C., May 9, 1974.

B–180472.

Hon. MELVIN PRICE,
Chairman, Committee on Standards of Official Conduct, House of Representatives.

DEAR MR. CHAIRMAN: Your letter of April 17, 1974, with attachments, requests our comments on the advisability of issuing a briefing paper on the legal ramifications of the acceptance by Members of Congress, or staff, of trips abroad that are paid for by foreign governments.

We are not aware of any decision by any forum as to the legality of such trips. The question arises because of the prohibition contained in article I, section 9, clause 8, of the United States Constitution, which reads as follows:

"No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title of any kind whatever, from any King, Prince, or foreign State."

In connection with this provision, we have viewed the term "present" as "synonymous with the term 'gift'," denoting "something voluntarily given, free from legal compulsion or obligation." 34 Comp. Gen. 331, 334 (1955); 37 Comp. Gen. 138, 140 (1957). "Emolument" has been defined as profit, gain, or compensation received for services rendered. 49 Comp. Gen. 819, 820 (1970); B–180472, March 4, 1974. Accordingly, and in view of the emphatic language of the Constitution (i.e., present or emolument "of any kind whatever"), we see no basis whereby trips paid for by foreign governments may be accepted by Members of Congress or members of their staffs without the consent of the Congress. If payment of the cost of a trip in a particular case be considered as an emolument for services to be rendered acceptance thereof would be categorically prohibited by the abovecited constitutional provision unless consented to by the Congress.

If on the other hand the payment of travel costs in a particular circumstance constitutes a gift, by enactment of section 7342 of title 5, United States Code, entitled "Receipt and disposition of foreign gifts and decorations," the Congress has given its consent to (quoting the Code provision in part)—

> "(1) the accepting and retaining by an employee of a gift of minimal value tendered or received as a souvenir or mark of courtesy; and
>
> "(2) the accepting by an employee of a gift of more than minimal value when it appears that to refuse the gift would be likely to cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States.
>
> "However, a gift of more than minimal value is deemed to have been accepted on behalf of the United States and shall be deposited by the donee for

use and disposal as the property of the United States under regulations prescribed under this section."

The term "employee" is defined in section 7342 as including members of Congress.

By Executive Order 11320, the President delegated to the Secretary of State the authority to issue regulations implementing this statute. These regulations are contained in part 3 of title 22, Code of Federal Regulations (CFR). A "gift of minimal value" is defined as "any present or other thing, other than a decoration, which has a retail value not in excess of $50 in the United States." 22 CFR § 3.3(e). The statute and regulations do not specifically cover trips, and the legislative history of the Foreign Gifts and Decorations Act of 1966, of which section 7342 is a part, indicates that the statute contemplated gifts of tangible items. In any event, the intent seems clear that, although a gift of more than minimal value may be "accepted" in the limited situations indicated, the value of such gift is not to inure to the benefit of the individual recipient. Accordingly, it is our view that section 7342 would not permit the acceptance of gifts of trips abroad by Members of Congress or members of their staffs that are paid for by foreign governments.

We see no objection to the issuance of a briefing paper, setting forth the above views of our Office, in order to provide guidance to Members of the Congress regarding this matter.

Sincerely yours,

R. F. KELLER,
Acting Comptroller General
of the United States.

ADVISORY OPINION NO. 4
(Issued May 14, 1975)

ON THE PROPRIETY OF ACCEPTING CERTAIN NON-PAID TRANSPORTATION

Reason for Issuance.—The Committee has been requested in writing to express an opinion on the propriety of Members and staff of the U.S. House of Representatives accepting non-paid transportation provided under a number of circumstances. In order that all may be on notice, the response to that request is made in this Committee Advisory Opinion.

Background.—It is necessary and desirable that Members and employees of the U.S. House of Representatives, being public officials, maintain maximum contact with the public at large to provide information on the work of the House and to gain citizen input into the legislative process. To accomplish this, considerable travel is required. Under some circumstances, such travel may be appropriately provided by other than commercial means. Conversely, in some circumstances non-paid transportation offers should be declined. It is the intent of this Advisory Opinion to address both situations.

The distinction turns on the *purpose* of the transportation. At times, it will be clear that there is a single identifiable purpose. At other times there may be more than one purpose involved. The Committee stresses that the opinions hereafter stated deal with the *principal* purpose for taking the trip, such purpose to be fairly determined by the person involved, before acceptance of any nonpaid transportation.

Non-Paid Transportation Offers To Be Declined.—If the principal purpose of the trip is political campaign activity, and the host carrier is one who would be prohibited by law from making a campaign contribution, such non-paid transportation would amount to a political contribution in kind, and should not be accepted.

If the trip is principally for noncampaign purposes, and the person involved were to request the host carrier to schedule transportation expressly for the convenience of the congressional passenger, such request could be interpreted as abuse of one's public position and should be avoided.

Non-Paid Transportation Offers Which may be Accepted.—If the purpose of the trip is principally representational or even personal, and if the host carrier's purpose in scheduling the transportation is solely for the general benefit of the host, and the transportation is furnished on a space-available basis with no additional costs incurred in providing the accommodation, it would not be improper to accept such transportation.

If the purpose of the transportation is to enable the congressional passenger, in his role as a public official, to be present at an event for the general benefit of an audience, the accommodation should be construed as accruing to the benefit of the audience—not the passenger—and it would not be improper to accept such transportation.

The above principle can be similarly applied to situations in which a congressional passenger is transported in connection with the receipt of an honorarium. Under such circumstances, the transportation may be accepted in lieu of monetary reimbursement for travel to which the passenger would otherwise be entitled.

Congressional officials, like other public officials and private persons, are on occasion invited as guests on scheduled airlines' inaugural flights. Specific authority to provide such non-paid transportation is contained in 14 CFR 223.8 and 399.34. Assuming that the conditions of these sections are strictly met, the Committee finds that there would be nothing improper in the acceptance of such inaugural flights.